

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -
ADAM FRIED, ADMINISTRATOR,)
et al.,)
Plaintiffs,)
v.) Case No. 1:18-CV-00139
CITY OF STRONGSVILLE,) Judge Patricia A. Gaughan
et al.,)
Defendants.)
- - -

THE DEPOSITION OF OFFICER WILLIAM JASON MILLER
THURSDAY, AUGUST 23, 2018
- - -

The deposition of OFFICER WILLIAM JASON MILLER, a Defendant herein, called for examination by the Plaintiffs, under the Federal Rules of Civil Procedure, taken before me, Kristine M. Esber, a Notary Public in and for the State of Ohio, pursuant to agreement of counsel, at the Strongsville Police Department, 18688 Royalton Road, Strongsville, Ohio, commencing at 10:19 a.m., the day and date above set forth.

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3 and as parent and next friend of Devon Connard, Yasmyn
4 Evans, and Roy Evans, Jr.
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43

1 OFFICER WILLIAM JASON MILLER
2 a Defendant herein, called for examination by the
3 Plaintiffs, under the Rules, having been first duly
4 sworn, as hereinafter certified, deposed and said as
5 follows:
6 ---

7 MR. SCOTT: Please let the
8 record reflect that we're here for the
9 deposition of Strongsville Police Officer
10 William Jason Miller being taken in the
11 matter of Adam Fried, Administrator, et
12 al., versus City of Strongsville, et al.
13 This case is pending in the United States
14 District Court for the Northern District
15 of Ohio, Case Number 1:18-CV-139 before
16 the Honorable Patricia A. Gaughan.
17 ---

18 CROSS-EXAMINATION
19 BY MR. SCOTT:
20 Q. Officer Miller, my name is Joseph Scott. And I
21 together with Attorney Marcus Sidoti have the privilege
22 of representing the Plaintiffs in this civil action
23 that we have filed concerning the events of March 7th,
24 2017.
25 And we've asked you here today to ask you a

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1 number of questions relative to that complaint. You
2 understand that, correct?
3 A. Yes.
4 Q. Okay. And, Officer Miller, I know you've had
5 your deposition taken before, but if I could, again, I
6 would just ask you as we go through this today, if I
7 ask you anything that's not clear or you don't
8 understand, please tell me and I'll try and rephrase my
9 question. Otherwise I'm going to assume that you're
10 trying to answer my question to the best your ability;
11 is that fair?
12 A. Yes.
13 Q. If at any time you want to take a break, please
14 let me know and we'll do so. I only ask that you
15 answer the question that's in front of you before we
16 break. Okay?
17 A. Yes.
18 Q. And, as always, please try and give a verbal
19 response as opposed to a nod of the head or uh-huh or
20 huh-uh as we won't have a clear understanding of what
21 that means when they transcribe this record. Okay?
22 A. Yes.
23 Q. All right. Would you please state your full
24 name for the record?
25 A. William Jason Miller.

1 Q. Okay. And, Officer Miller, you are employed
2 with the City of Strongsville Police Department,
3 correct?
4 **A. Yes.**
5 Q. Okay. And what is your current position with
6 the Strongsville Police Department?
7 **A. I am a canine officer on night shift.**
8 Q. And how long have you been employed with the
9 City of Strongsville Police Department?
10 **A. Since August of 2001.**
11 Q. August of 2000?
12 **A. 2001.**
13 Q. Okay. 2001. Have you spent your entire law
14 enforcement career here in the City of Strongsville?
15 **A. Yes.**
16 Q. You didn't have any prior service with any other
17 community or police department, correct?
18 **A. No.**
19 Q. Officer Miller, did you have the chance to do
20 anything in preparation for today's deposition?
21 I don't want to know about things you discussed
22 with your attorney, but did you have a chance to look
23 at documents or meet with other officers or review
24 materials?
25 **A. Yes.**

1 Q. Can you please tell me what you did to prepare
2 for today's deposition?
3 **A. I read my statement to BCI.**
4 Q. Okay.
5 **A. And listened to the audio of that statement to**
6 **BCI.**
7 Q. Okay.
8 **A. And watched the cruiser dash cams that were**
9 **involved in the incident.**
10 Q. Okay. Did you have a chance to speak with any
11 of the other officers that were involved in the pursuit
12 that we're here to talk about today?
13 **A. Regarding this topic?**
14 Q. Yes, sir.
15 **A. No.**
16 Q. Okay. I appreciate that you work with these
17 same officers every day and you may have interaction
18 about other business. So you didn't talk about this
19 case?
20 **A. No.**
21 Q. Okay. Let me, since you mentioned it, I will
22 hand you what I will mark as Plaintiffs' Exhibit 9.
23 (Thereupon, Plaintiffs' Exhibit 9 to
24 the deposition of OFFICER WILLIAM JASON
25 MILLER was marked for identification.)

1 BY MR. SCOTT:
2 Q. And please take a few moments to look that over.
3 MR. RASKIN: Do you want
4 him to read the entire document, Joe?
5 MR. SCOTT: No. I'm not
6 going to ask him about the document right
7 now. I just want him to be comfortable
8 that he had a chance to look at it and
9 knows what it is.
10 **A. I know what it is.**
11 Q. Okay. Officer Miller, is this the statement
12 that you were just referencing that you reviewed prior
13 to today's deposition?
14 **A. It appears so.**
15 Q. Okay. And Plaintiffs' Exhibit 9 is a statement
16 that was taken during an interview between yourself and
17 Special Agent Charles Moran with the Bureau of Criminal
18 Investigation, correct?
19 **A. Yes.**
20 Q. That interview occurred on or about March 14th
21 of 2017; is that correct?
22 **A. Yes.**
23 Q. Okay. And I know that -- or I don't believe
24 this statement was made under oath, but is the
25 statement to the best of your knowledge truthful and

1 accurate?
2 **A. Yes.**
3 Q. Is there anything in this statement that you
4 would change as you sit here today?
5 MR. RASKIN: Make sure you
6 read the entire statement if you are being
7 asked that question.
8 (Thereupon, Plaintiffs' Exhibit 10 to
9 the deposition of OFFICER WILLIAM JASON
10 MILLER was marked for identification.)
11 MR. RASKIN: Take your time.
12 (Thereupon, there was a discussion
13 off the record.)
14 BY MR. SCOTT:
15 Q. Okay. Officer Miller, you've had an opportunity
16 to look over the statement that you gave to BCI back on
17 March 14 of 2017. Again, is there anything in that
18 statement that you would change as you sit here today?
19 **A. No.**
20 Q. Okay. Thank you. Let me hand you what's been
21 marked as Plaintiffs' Exhibit Number 10.
22 MR. PHILLIPS: Do you have
23 enough, Joe?
24 MR. SCOTT: It's okay. We
25 all have that.

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1 MR. PHILLIPS: Okay.
 2 MR. SCOTT: It's discovery
 3 requests.
 4 MR. PHILLIPS: Thank you.
 5 MR. SCOTT: You're
 6 welcome.
 7 BY MR. SCOTT:
 8 Q. Officer Miller, I'll represent to you that these
 9 were discovery responses that were provided to me
 10 through your counsel for interrogatories that were
 11 directed to you in this case. Do you see that?
 12 **A. Yes.**
 13 Q. Okay. And I think these were answered on or
 14 about June 12th of 2018. Do you see that?
 15 MR. RASKIN: Can I direct
 16 him?
 17 MR. SCOTT: Oh, please,
 18 please. Yes. Thank you.
 19 **A. Yes.**
 20 Q. And, again, Officer, I would ask as you sit here
 21 today is there anything in there that you would change
 22 or supplement as you sit here today?
 23 MR. RASKIN: Just read your
 24 answers on the bottom of page 5.
 25 While Officer Miller is reading

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1 Plaintiffs' Exhibit 10 let me just
 2 interpose an objection to the extent that
 3 your question seeks to have him comment
 4 upon the objections that were asserted by
 5 counsel.
 6 MR. SCOTT: Oh, no, I
 7 appreciate that. That wasn't my intent.
 8 MR. RASKIN: Okay. So he
 9 can ignore the objections --
 10 MR. SCOTT: Absolutely.
 11 MR. RASKIN: -- that we
 12 made.
 13 So wherever you see an objection to a
 14 question or an interrogatory, don't bother
 15 with that. We're taking a legal position.
 16 MR. SCOTT: Absolutely.
 17 Correct.
 18 **A. No.**
 19 Q. Okay. Officer Miller, I wanted to ask you about
 20 two of the interrogatories in particular, if I may.
 21 The first one concerned the prior litigation involving
 22 a Lawrence McKissic. It was reflected in interrogatory
 23 Number 11. And I believe this was one of four, the
 24 Lawrence McKissic was one of four use of deadly force
 25 incidents that you've been involved in during your time

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1 here in Strongsville, correct?
 2 **A. Yes.**
 3 Q. And correct me if I'm wrong, at the time of the
 4 Lawrence McKissic incident were you operating as part
 5 of a multi-jurisdictional task force or possibly as a
 6 deputized federal agent?
 7 **A. Yes.**
 8 Q. Both?
 9 **A. Yes.**
 10 Q. All right. Fair enough. And you had indicated
 11 that your understanding was that the case was dismissed
 12 on summary judgment in your answer. Do you understand
 13 that the case was actually settled?
 14 **A. Well, at the time I didn't know the difference.**
 15 Q. And I appreciate that.
 16 **A. And to my knowledge at the time it was**
 17 **dismissed.**
 18 Q. Okay.
 19 **A. Or I was removed from the case and so I was**
 20 **dismissed, so to speak.**
 21 Q. Okay.
 22 **A. And so that's where I assumed that that was**
 23 **applicable.**
 24 Q. Did you ever hear of the Westfall Act?
 25 **A. No.**

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1 Q. Did anybody ever mention that to you?
 2 Okay. That's fine. We don't need to get in to
 3 it. And I appreciate your understanding was the case
 4 was resolved somehow, that you were dropped from the
 5 case. But do you understand now that the case in fact
 6 was settled?
 7 **A. If you say it was. I don't know the answer to**
 8 **that.**
 9 MR. RASKIN: He asked for
 10 your understanding, not what you think he
 11 means. Just answer his question.
 12 **A. Ask it again, please.**
 13 Q. Do you understand now that the case was settled?
 14 **A. No.**
 15 Q. Okay. And after the resolution of the McKissic
 16 case was there any further review within the
 17 Strongsville Police Department concerning your
 18 involvement in that incident?
 19 **A. No.**
 20 Q. Okay. Were you ever subject to any sort of
 21 review by the Strongsville Police Department concerning
 22 your involvement in the Lawrence McKissic incident?
 23 **A. Yes.**
 24 Q. What do you recall about that?
 25 **A. I believe the Chief of Police at the time Chief**

1 **Goss reviewed the incident and the application of**
 2 **force.**
 3 Q. Did you ever meet with Chief Goss regarding the
 4 incident and your particular use of force?
 5 **A. Yes.**
 6 Q. Okay. Individually?
 7 **A. Yes.**
 8 Q. Okay. And this was a use of deadly force,
 9 correct?
 10 **A. Yes.**
 11 Q. And Mr. McKissic as it turned out was an unarmed
 12 suspect; is that fair?
 13 **A. No.**
 14 Q. What is your understanding?
 15 **A. He used his vehicle as a weapon.**
 16 Q. Okay. He didn't have a gun; he used his vehicle
 17 as a weapon?
 18 **A. Yes.**
 19 Q. Okay. And then let me ask you about the other
 20 interrogatory on that page, interrogatory Number 13.
 21 And I'd asked you about your knowledge of the early
 22 warning system for the City of Strongsville. Do you
 23 see that?
 24 **A. Yes.**
 25 Q. Okay. And you had indicated at that time that

1 you haven't received any training and you really didn't
 2 have any knowledge of the early warning system; am I
 3 correct?
 4 **A. That's correct.**
 5 Q. Is that still true today?
 6 MR. RASKIN: Objection.
 7 You may answer that question, however
 8 you may not disclose any information you
 9 received as a result of your consultations
 10 with counsel. Subject to that
 11 instruction, you can answer.
 12 **A. Ask the question again, please.**
 13 Q. Yes. Let me ask it this way: since answering
 14 these interrogatories on June 12th of 2018 have you
 15 received any training as regards the City of
 16 Strongsville Police Department's early warning system?
 17 **A. No.**
 18 Q. Okay. And I take it inasmuch as you were not
 19 aware, at least as of June 12th, 2018, of the City of
 20 Strongsville's early warning system, I take it you were
 21 not aware of any enhanced early warning system policy
 22 during the tenure of Chief James Kobak; is that fair?
 23 **A. It's fair.**
 24 MR. SCOTT: Okay. Let me
 25 mark this as Plaintiffs' Exhibit 11, if I

1 may.
 2 (Thereupon, Plaintiffs' Exhibit 11 to
 3 the deposition of OFFICER WILLIAM JASON
 4 MILLER was marked for identification.)
 5 BY MR. SCOTT:
 6 Q. Officer Miller, I'm going to hand you what has
 7 been marked as Plaintiffs' Exhibit 11. Take a moment
 8 to look that over.
 9 And, Officer Miller, let me begin by asking you
 10 have you ever seen Plaintiffs' Exhibit 11 before?
 11 MR. RASKIN: Objection.
 12 Same instructions, you can answer his
 13 questions so long as you don't reveal
 14 discussions you had or information you
 15 received from consultation with counsel.
 16 Subject to that instruction, you can
 17 answer the question.
 18 **A. I've never seen this form before today.**
 19 Q. Okay. Now, we received this late yesterday, and
 20 my understanding is that this is a summary of
 21 administrative proceedings involving yourself during
 22 your time here at the City of Strongsville Police
 23 Department.
 24 Let me ask you, and this appears to be in
 25 reverse chronological order with the first entry being

1 the most recent and the last entry being the oldest.
 2 As you look through these do you remember any of these
 3 administrative proceedings?
 4 MR. RASKIN: Objection.
 5 That mischaracterizes the document.
 6 You can answer the question if you
 7 know.
 8 **A. I can't answer to any of this, what it**
 9 **represents or what it means to the police department**
 10 **because I've never seen it before and I didn't know it**
 11 **existed.**
 12 Q. Okay. Let me just ask you about a couple of the
 13 entries, if I may. In the one column, we go 11 columns
 14 over, there's a column captioned pursuit. Do you see
 15 that?
 16 **A. Yes.**
 17 Q. And then as we go down there's a number of
 18 document files and check boxes that I assume indicate a
 19 pursuit that maybe you were involved with. Do you
 20 know?
 21 MR. RASKIN: Objection,
 22 foundation.
 23 You can answer.
 24 **A. I don't know what qualifies a check mark and**
 25 **what does not for any of those columns, or what my**

1 involvement would have been for any of them or for any
 2 of the subject matter.
 3 Q. As I look through the pursuit column I see
 4 approximately 27 checked boxes. Let me ask you, do you
 5 recall being involved in 27 pursuits during your time
 6 here?
 7 **A. I don't keep track of how many pursuits I've**
 8 **been involved with outside of report writing.**
 9 Q. Okay.
 10 **A. So I couldn't answer that.**
 11 Q. Do you think you've been involved in 27
 12 pursuits?
 13 **A. I would like for you to specify, do you mean as**
 14 **a primary responder, or I responded to the scene after**
 15 **a pursuit?**
 16 **I can't answer this because I don't know what**
 17 **the qualifications of involvement are.**
 18 Q. Okay.
 19 **A. I could have responded to a scene after a**
 20 **pursuit. I get calls out for the dog after a pursuit,**
 21 **a crash. I don't know how they compile this**
 22 **information or what constitutes a check mark.**
 23 Q. Okay. Let's go through it a couple of different
 24 ways. First of all, using possibly the broadest
 25 definition, so a pursuit whether you were primary

1 Q. What would be a range that fits better with your
 2 recollection?
 3 **A. I don't think it would be fair to say. I just**
 4 **don't keep the stats. I don't keep record of it.**
 5 Q. But you think it's fewer than 27?
 6 **A. Yes.**
 7 Q. Okay. Do you know of those how many would have
 8 been high speed pursuits?
 9 **A. I can't give you an exact number.**
 10 Q. Okay. Do you think the majority of the pursuits
 11 where you've been involved in where you've been the
 12 primary responding officer would have been high speed
 13 pursuits?
 14 **A. Yes.**
 15 Q. Do you know how many of those pursuits where
 16 you've been the primary responding officer have
 17 terminated with the driver voluntarily stopping at some
 18 point?
 19 **A. I do not.**
 20 Q. Do you know how many of those pursuits where
 21 you've been the primary responding officer terminated
 22 involuntarily with either a vehicle crash or through
 23 other means?
 24 **A. No, I don't know how many.**
 25 Q. Okay. Would you believe that to be the majority

1 responder, support, or arrived on scene following
 2 determination of a pursuit. Does the number 27 comport
 3 with your recollection as to how many pursuits you may
 4 have been involved in?
 5 **A. I just can't answer that definitively. I really**
 6 **don't keep track of how many pursuits I've been**
 7 **involved with.**
 8 Q. I guess I'm just trying to find range. Does
 9 that number sound high or low?
 10 MR. RASKIN: Objection,
 11 asked and answered.
 12 You can answer it again if you can.
 13 **A. If I knew specifically what their criteria was**
 14 **to say that I was involved versus what I was not**
 15 **involved with, at what level of involvement, I could**
 16 **answer that.**
 17 Q. Okay. Let's try it another way. Pursuits where
 18 you were the primary responding officer, would 27 sound
 19 high to you in terms of the number of pursuits that
 20 you've been involved in during your time with
 21 Strongsville?
 22 **A. Yes.**
 23 Q. Okay. So you think it's been fewer than 27
 24 where you've been the primary officer?
 25 **A. Yes.**

1 of the pursuits?
 2 **A. Which?**
 3 Q. That the vehicle -- the pursuit terminated
 4 involuntarily with either the vehicle crashing or
 5 otherwise being forced to stop.
 6 **A. No. I don't feel that that's accurate.**
 7 Q. Okay. What would you say is more accurate?
 8 **A. If we're breaking this down in to ways that the**
 9 **individual pursuits were stopped, I would think more**
 10 **were called off because of the speed or the environment**
 11 **we were in, in combination with them pulling over,**
 12 **being compliant, rather than -- I think those would**
 13 **outweigh any of the crashes that took place.**
 14 Q. Okay. Do you have -- the pursuit that we're
 15 here to talk about today did not end voluntarily. Can
 16 we agree on that?
 17 **A. That's correct.**
 18 Q. Okay. How many other pursuits do you recall
 19 being involved in as a primary responder or a support
 20 vehicle where the pursuit did not end voluntarily?
 21 **A. Define voluntarily. Do you mean by way of our**
 22 **direct causality, or the driver miscalculated and**
 23 **crashed.**
 24 Q. Well, including situations where the driver
 25 miscalculated and crashed or some other use of force,

1 whether it be stop strips, rolling roadblock.
 2 **A. That's not some other use of force. Either they**
 3 **crashed because they made a mistake and miscalculated**
 4 **their ability to drive, or we specifically did**
 5 **something. So I can't throw those two together.**
 6 Q. Take them one at a time. Pursuits where the
 7 driver miscalculated and crashed, how many of those do
 8 you recall?
 9 **A. I recall individuals, but I can't give you a**
 10 **specific number.**
 11 Q. Okay. More than one?
 12 **A. Yes.**
 13 Q. Okay. More than five?
 14 **A. I would have to read the individual reports**
 15 **because there were some where they crashed after the**
 16 **pursuit was called off.**
 17 Q. Okay.
 18 **A. And without reading a report, I can't separate**
 19 **the details right now off of memory.**
 20 Q. Were you involved in one such pursuit within a
 21 few weeks of the March 7th, 2017 event?
 22 **A. Prior, just prior to it. Yes.**
 23 Q. Yes. With Officer Vlana, was that the other
 24 officer involved, or was it somebody else?
 25 **A. Wow, the pursuit I'm particularly thinking of**

1 **included the majority of night shift. So to say who**
 2 **was involved primary or secondary, I can't. I would**
 3 **imagine the majority of the shift was involved at some**
 4 **point.**
 5 Q. Okay. What do you recall about that pursuit,
 6 the one that occurred just a couple weeks prior to
 7 March 7th, 2017?
 8 **A. We had been having a rash of car thefts in a**
 9 **particular zone in Strongsville. And I was posted at**
 10 **the top of the hill on Pearl Road near Boston and I was**
 11 **running traffic in that area.**
 12 **A vehicle came off of Admiralty north of my**
 13 **position and proceeded towards me. There was no other**
 14 **traffic on the road. My radar just blew up, meaning**
 15 **the car looked like it was driving very, very fast.**
 16 **The speed limit through there is only 35. And I don't**
 17 **recall the speed as we sit here today, however I recall**
 18 **being astonished that it was very high. I want to say**
 19 **over 60.**
 20 **I turned in after it as it went by and the**
 21 **vehicle almost immediately did a U-turn at the top of**
 22 **the hill just into Medina County. Did a U-turn into**
 23 **the BP that's there, gas station, then proceeded**
 24 **northbound the way it came.**
 25 Q. Okay.

1 **A. I gave out the information that I was in pursuit**
 2 **of the vehicle. I don't remember a lot of specifics.**
 3 **I know it was a maroon four door, two black male**
 4 **occupants northbound.**
 5 **And I was operating the same Ford Crown Vic**
 6 **which had a hard time keeping up. And I put the**
 7 **information out to radio and everybody else that was**
 8 **listening that I was in pursuit. And that's when**
 9 **everybody else started to converge on the pursuit.**
 10 Q. Okay. That pursuit ultimately ended with the
 11 suspect vehicle wrecking?
 12 **A. Well, I was not present for how the vehicle came**
 13 **to a stop. We lost view on 71 northbound near West**
 14 **65th. We lost contact with the vehicle. In fact, we**
 15 **found out later the vehicle got off at West 65th and we**
 16 **continued northbound.**
 17 **I don't remember who the other officer was. I**
 18 **believe it was Officer Glover who was immediately with**
 19 **me. And after we had overshot the exit that the**
 20 **vehicle took, it was -- I want to say it was pretty icy**
 21 **and slippery.**
 22 **When we responded back because OSP, Ohio State**
 23 **Highway Patrol called to say they found the vehicle and**
 24 **what street it was on. It was just off the ramp. We**
 25 **went back to that, and that as you exit the ramp at**

1 **West 65th and you go across the street, so to speak,**
 2 **it's a dip, it's a downhill descent and it was very**
 3 **icy. When we arrived it was very slippery.**
 4 **We don't know if that car crashed by itself or**
 5 **if they bailed and the car rolled to a stop. So to**
 6 **answer your question I don't know exactly how it ended.**
 7 **It did leave the roadway at some point. Whether it was**
 8 **occupied at the time or not, we don't know. And it did**
 9 **come in contact with a tree lawn and maybe a tree and a**
 10 **fence.**
 11 Q. Okay. Do you have a recollection of how many
 12 motor vehicle accidents you've been involved in while
 13 performing your duties as a Strongsville Police
 14 Officer?
 15 **A. No.**
 16 Q. Okay. Again, if we look at Plaintiffs' Exhibit
 17 11, there is a column designated as cruiser MVA. Do
 18 you see that?
 19 **A. Yes.**
 20 Q. And we look down and see one, two, three, four,
 21 five, six instances where the box in that column has
 22 been checked. Would that comport with your
 23 recollection of the number of motor vehicle accidents
 24 that you've been involved in?
 25 **A. I don't know the standards by which they call it**

1 **a cruiser MVA. If you're telling me that this means**
2 **they reported to the state, I don't know. I really**
3 **don't know.**
4 Q. Well, do you recall being involved in six motor
5 vehicle accidents during your time as a Strongsville
6 Police Officer?
7 **A. No.**
8 Q. Do you think, do you recall fewer or more than
9 six motor vehicle accidents?
10 **A. Well, I guess I'm trying to separate my recall**
11 **from -- I've hit several deer. I don't know the**
12 **application of the cruiser MVA. It could be from deer**
13 **accidents, from pursuits. I don't know. So to be able**
14 **to say have I wrecked or caused damage on six cruisers,**
15 **it's possible.**
16 Q. Okay.
17 **A. However I don't know the action.**
18 Q. Do you think you've caused damage on more than
19 six cruisers?
20 **A. No.**
21 Q. Okay. I want to turn back to Plaintiffs'
22 Exhibit 10 for just a second and I want to ask you
23 about interrogatory Number 12, if I may. And in
24 interrogatory 12 I had asked about any suspensions that
25 you might have experienced during your time with

1 **A. Not specifically, no.**
2 Q. Okay. And would it be your testimony that that
3 record is inaccurate, that you did not have such a
4 suspension, or you just simply don't remember one way
5 or the other?
6 **A. Well, I suppose if you could provide a document**
7 **that described this incident or described what happened**
8 **as a matter of that, I can't say one way or another. I**
9 **can't remember ever being disciplined and suspended in**
10 **2015.**
11 Q. Okay. This was a record that was provided in
12 response to a public records request by the City of
13 Strongsville back on September 1 of 2015. So that's
14 where I got the information was from the city, but you
15 don't have any recollection of that particular
16 suspension?
17 **A. I'm sure it's accurate, but I don't know. I**
18 **can't recall.**
19 MR. RASKIN: Don't guess.
20 Just answer his question.
21 BY MR. SCOTT:
22 Q. All right. Officer Miller, during your time
23 here at the City of Strongsville have you received
24 regular, and by regular I mean scheduled, periodic
25 performance evaluations?

1 Strongsville. Do you see that?
2 **A. Yes.**
3 Q. And you did mention one day's suspension back in
4 2010; is that correct?
5 **A. Yes.**
6 Q. Okay. Did you have another suspension in 2015?
7 And here, let me -- to be fair let me show you
8 what was previously marked as Plaintiffs' Exhibit 8
9 during Chief Kobak's deposition, and I'll show you what
10 I'm looking at. Look at the whole thing if you like,
11 but I'm specifically looking at the information in
12 section B.
13 MR. RASKIN: Section B you
14 said.
15 MR. SCOTT: Yes. You'll
16 see it. It's about halfway right down
17 there. (Indicating).
18 MR. RASKIN: Read back the
19 question, please.
20 MR. SCOTT: I can ask a
21 different question.
22 BY MR. SCOTT:
23 Q. Officer Miller, what I'm trying to ask you is do
24 you recall a disciplinary suspension on or about July
25 5th I think it is of 2015?

1 **A. Yes.**
2 Q. Okay. And has the process for completing the
3 performance evaluations changed at all throughout your
4 career?
5 **A. Yes.**
6 Q. Okay. What has changed; what's different?
7 **A. Generally we use a bubble system that describes**
8 **characteristics of the expected -- of what's expected**
9 **of the police officer. And that's changed based on**
10 **stats and the way we sign off on it. It's now**
11 **electronic versus handwritten, things like that.**
12 Q. When did it become electronic to your knowledge?
13 **A. Maybe a year ago.**
14 Q. Okay. So is the form, the performance
15 evaluation form then completed online with some
16 software or something, some electronic version?
17 **A. It's done on a computer in the sergeant's**
18 **office.**
19 Q. Okay. And it's done in the sergeant's office?
20 **A. Yes.**
21 Q. Okay. My understanding is that one of the
22 sergeants for whatever shift you're primarily working
23 will be the individual who completes the performance
24 evaluation; is that right?
25 **A. Completes it, or does the review with the**

1 officer?
 2 Q. Well, why don't you tell me how it works.
 3 **A. My understanding is the three sergeants that are**
 4 **in charge of the officer have a discussion on the**
 5 **evaluation and how it should be filled out per officer.**
 6 **And then one of those sergeants does the review of that**
 7 **evaluation with the officer individually.**
 8 Q. Okay. So is it your understanding that the
 9 performance evaluation reflects the collective opinion
 10 of the three shift sergeants?
 11 **A. No.**
 12 Q. What is your understanding?
 13 **A. It's not always done -- I'm not present when**
 14 **those are filled out. Sometimes they are filled out**
 15 **without the other sergeants present, because the**
 16 **sergeant who has to get that task completed has to get**
 17 **the job done and they have to be turned in by a**
 18 **deadline.**
 19 Q. Okay.
 20 **A. So there are times when the sergeants have not**
 21 **all been available to complete that.**
 22 Q. Okay. Is it your understanding that ideally all
 23 three sergeants will meet to confer about each officer
 24 under their supervision when completing a performance
 25 evaluation?

1 **A. It would be ideal.**
 2 Q. But you're saying that that may not always be
 3 possible due to time constraints and whatever demands
 4 the sergeants are responding to when the performance
 5 evaluation is being completed, correct?
 6 **A. That's correct.**
 7 Q. All right. Are you given some sort of
 8 notification?
 9 It's my understanding these are quarterly
 10 evaluations; is that correct?
 11 **A. Yes.**
 12 Q. Okay. Are you given some sort of notification
 13 when these are going to occur, or are you just called
 14 in after the fact and say we have your quarterly
 15 evaluation and we'd like to go through it with you?
 16 **A. That's correct, the latter.**
 17 Q. So you're notified after the evaluation has been
 18 completed that one of the sergeants wants to have a
 19 meeting with you to discuss the evaluation?
 20 **A. That's correct.**
 21 Q. Okay. And it's not necessarily the same
 22 sergeant each time, correct?
 23 **A. That's correct.**
 24 Q. Okay. But it will be one of the three from the
 25 shift. And you primarily work third shift; is that

1 correct?
 2 **A. Yes.**
 3 Q. And what are the hours of that?
 4 **A. 2200 to 0700.**
 5 Q. Okay. We marked several of the performance
 6 evaluations at Chief Kobak's deposition. Let me just
 7 hand them to you. They were previously marked as
 8 Plaintiffs' Exhibit 5, 6 and 7. If you could just take
 9 a minute and familiarize yourself with those, please.
 10 MR. RASKIN: Okay. Thank
 11 you.
 12 BY MR. SCOTT:
 13 Q. Officer Miller, you had a chance to look at
 14 Plaintiffs' Exhibits 5, 6 and 7, correct?
 15 **A. Yes.**
 16 Q. And these appear to be quarterly evaluations for
 17 yourself. Plaintiffs' Exhibit 5 is for the period of
 18 1-1-2014 to 4-30-2014, correct?
 19 **A. Yes.**
 20 Q. And then Plaintiffs' Exhibit 6 would be for the
 21 period of 5-1-2014 to 8-31-2014, correct?
 22 **A. Yes.**
 23 Q. And Plaintiffs' Exhibit 7 is for the period of
 24 1-1-2015 to 4-30-2015, correct?
 25 **A. Yes.**

1 Q. And the form that these are printed on, this is
 2 a preprinted form. Is the online or computer-based
 3 form similar to the information that's contained in
 4 Plaintiffs' Exhibits 5, 6 and 7?
 5 In terms of the structure of the form. Not the
 6 part that's been handwritten, but just how the form is
 7 structured.
 8 **A. Without seeing one, I can't say that any of the**
 9 **criteria 1 through 9 on the cover page is still the**
 10 **same or worded the same as page 2.**
 11 Q. Okay.
 12 **A. They seem similar, but I can't say that they're**
 13 **the same.**
 14 Q. All right. Now, you would have met with one of
 15 the shift sergeants when each of these evaluation forms
 16 was completed, correct?
 17 **A. That's correct.**
 18 Q. And on the second page of each of those
 19 evaluation forms is a space for a performance
 20 improvement plan. Do you see that?
 21 **A. Yes.**
 22 Q. Okay. And on the three exhibits that you have
 23 Plaintiffs' Exhibits 5, 6 and 7, the performance
 24 improvement plan section is blank, correct?
 25 **A. Yes.**

1 Q. Were you ever given -- for the time reflected by
2 these evaluations were you ever given a written
3 performance improvement plan?

4 **A. Never.**

5 Q. Okay. Have you ever been given a written
6 performance plan during your career here with the City
7 of Strongsville Police Department?

8 **A. No.**

9 Q. Other than meeting with the shift sergeant for
10 each of the evaluations reflected in Plaintiffs'
11 Exhibits 5, 6 and 7, did you meet with anyone else in
12 the chain of command regarding your particular
13 evaluations for each of those periods?

14 **A. No.**

15 Q. My understanding from talking to former Chief
16 Kobak is the structure of the department is such that
17 beneath the chief are two deputy chiefs. Am I correct
18 about that, if you know?

19 **A. It depends. There were times when during**
20 **transitions it's not always like that, but essentially**
21 **yes.**

22 Q. Well, I appreciate that. So there might have
23 been subtle differences when transitioning from one
24 chief to another you mean?

25 **A. Yes.**

1 Q. Certainly under Chief Kobak my understanding is
2 there were two deputy chiefs. Does that comport --

3 **A. Yes.**

4 Q. And beneath the two deputy chiefs would have
5 been two lieutenants?

6 **A. There could have been a third.**

7 Q. Okay. Do you know if the individuals who held
8 the position of deputy chief under Chief Kobak, if
9 those were the two same individuals throughout his time
10 as Chief of Police for the City of Strongsville?

11 **A. No.**

12 Q. You don't know, or they weren't?

13 **A. I don't recall when they were promoted or --**

14 Q. I think one of those individuals was
15 Chief Fender. Is that your recollection?

16 **A. Yes.**

17 Q. Okay. Did you ever meet with either
18 Chief Fender or the individual who held the other post
19 as deputy chief under Chief Kobak, did you ever meet
20 with any of those deputy chiefs concerning your
21 evaluation, the evaluation of your performance as a
22 City of Strongsville Police Officer?

23 **A. For these particular three that we're talking**
24 **about?**

25 Q. Yes, sir.

1 **A. No.**

2 Q. For any other evaluation that you may have
3 received as a City of Strongsville Police Officer?

4 **A. No.**

5 Q. What about the lieutenants, did you ever meet
6 with any City of Strongsville Police lieutenant during
7 Chief Kobak's tenure to discuss your performance as a
8 City of Strongsville Police Officer?

9 **A. For these particular three?**

10 Q. Yes.

11 **A. No.**

12 Q. Okay. Did you ever meet with any City of
13 Strongsville Police Lieutenant again during Chief
14 Kobak's tenure concerning any other performance
15 evaluation that you may have received other than those
16 contained in Plaintiffs' Exhibits 5, 6 and 7?

17 **A. It's possible.**

18 Q. All right. Do you have a specific recollection
19 of doing that, or are you just guessing that that may
20 have happened?

21 **A. I'm not guessing. I know that I sat down with**
22 **who at one time was Sergeant O'Deens who was then**
23 **promoted to lieutenant and had the evaluations**
24 **completed. I don't recall if that was during the end**
25 **of Kobak's career or the beginning of Fender's tenure**

1 **as Chief.**

2 Q. Okay.

3 **A. There was a time while he was a lieutenant he**
4 **was still assigned to the night shift. And I don't**
5 **recall specifically if he was lieutenant at the time,**
6 **but I did sit down with him.**

7 Q. Okay.

8 **A. On occasion.**

9 Q. Is Lieutenant O'Deens still a lieutenant with
10 the City of Strongsville Police Department?

11 **A. Yes.**

12 Q. Okay. And I want to understand this. Was this
13 something that you recall only happening once in your
14 career here where you met with a lieutenant concerning
15 your performance evaluation?

16 **A. In my career?**

17 Q. Here, yes.

18 **A. No.**

19 Q. Okay. There's been other occasions where you
20 meet with a lieutenant here at City of Strongsville to
21 discuss a performance evaluation?

22 **A. Yes.**

23 Q. How many other times do you think you've met
24 with a lieutenant?

25 **A. During my career, early in my career Charles**

1 **Goss was chief and Lieutenant Fender, currently Chief,**
2 **was the lieutenant of night shift. And he filled out**
3 **several of these during the time he was assigned to**
4 **night shift as a lieutenant.**
5 Q. Okay. So early on in your career when
6 Lieutenant Fender, then Lieutenant Fender was assigned
7 to night shift, he took on the responsibility on some
8 occasions to complete the performance evaluation as
9 opposed to the night shift sergeant?
10 **A. To complete it, or review it with the officer?**
11 Q. Okay. You tell me which.
12 **A. I don't know who completed them.**
13 Q. Okay.
14 **A. I know that I sat down for review on multiple**
15 **occasions with the lieutenant because he was the only**
16 **OIC that night or that week that he was doing the**
17 **reviews.**
18 Q. Okay. During the time of Chief Kobak's tenure
19 am I correct it was not the regular practice for the
20 night shift lieutenant to meet with night shift
21 officers to review the performance evaluations?
22 **A. I don't recall the transition. I don't remember**
23 **specifically when. It may have been on paper that's**
24 **what they expected to do, but I don't recall**
25 **specifically.**

1 Q. Well, what you've told me about is one instance
2 possibly close to the end of Chief Kobak's tenure or
3 possibly the beginning of Chief Fender's tenure, one
4 incident where you meet with Lieutenant O'Deens to
5 discuss your performance evaluation.
6 **A. Yes.**
7 Q. And that's the only incident where you recall
8 meeting with a lieutenant during or near the time of
9 Chief Kobak's tenure as Chief of Police; is that fair?
10 **A. We filled out four of these a year since I've**
11 **been here and I can't recall specifically.**
12 Q. Okay. And all I'm asking is what you remember
13 as you sit here. You remember the one incident,
14 correct?
15 **A. And I was clear that I'm not sure if he was**
16 **still a sergeant at that time. He could have been a**
17 **lieutenant at the time.**
18 Q. Oh, no, I understand that.
19 **A. Okay.**
20 Q. I understand. And I understand you have never
21 received a written performance improvement plan during
22 your time here as a City of Strongsville Police
23 Officer, correct?
24 **A. That's correct.**
25 Q. Have you ever received any sort of letter of

1 reinstruction or anything like that?
2 **A. Not that I'm familiar with.**
3 Q. Okay. Have you ever been sent to any sort of
4 retraining because of your involvement in any
5 particular incident?
6 **A. No.**
7 MR. RASKIN: He's done with
8 these. You can focus on his questions.
9 BY MR. SCOTT:
10 Q. I understand that there may be times when there
11 is roll call training or other types of in-service
12 training that all the officers may attend together. I
13 want to ask you about other types of training. For
14 instance, have you received any training outside of the
15 academy on performing a rolling roadblock?
16 **A. No.**
17 Q. Have you ever practiced performing a rolling
18 roadblock with other officers here?
19 **A. No.**
20 Q. What about felony call out stops as a traffic
21 stop tactic, have you ever practiced performing a
22 felony call out stop with other officers here?
23 **A. No.**
24 Q. I want to ask you --
25 MR. SCOTT: Let's go ahead

1 and mark this.
2 (Thereupon, Plaintiffs' Exhibit 12 to
3 the deposition of OFFICER WILLIAM JASON
4 MILLER was marked for identification.)
5 BY MR. SCOTT:
6 Q. Officer Miller, let me hand you what I've marked
7 as Plaintiffs' Exhibit 12.
8 MR. PHILLIPS: Thank you,
9 Joseph.
10 MR. SCOTT: You're welcome.
11 MR. RASKIN: Thank you.
12 Q. Please take a minute to look that over.
13 Officer Miller, you've had a chance to look at
14 Plaintiffs' Exhibit 12. Are you familiar with that
15 document?
16 **A. Yes.**
17 Q. Okay. This purports to be City of
18 Strongsville's policy regarding motorist stops; is that
19 correct?
20 **A. That's correct.**
21 Q. Are you aware of any other written policies
22 maintained by the City of Strongsville Police
23 Department other than this policy that discusses or
24 gives direction on how to perform a motor vehicle stop?
25 **A. No.**

1 Q. Okay. The second page of Plaintiffs' Exhibit
 2 12, section B is captioned high risk stops.
 3 **A. I see that.**
 4 Q. Okay. Again, are you aware of any other written
 5 policy maintained by the City of Strongsville governing
 6 how Strongsville Police Officers perform high risk
 7 stops?
 8 **A. No.**
 9 Q. Okay. What is your understanding of what
 10 qualifies as a high risk stop?
 11 **A. Essentially a high risk stop are those stops**
 12 **that are not for just common traffic violations. They**
 13 **include when it's a shoplifting, you know, there's a**
 14 **misdemeanor warrant involved, those types of things.**
 15 **It's a rolling domestic.**
 16 Q. Okay. The policy indicates that, if I'm reading
 17 this correctly, special procedures shall be utilized
 18 when stopping and approaching suspected or confirmed
 19 felony violators or other high risk stops, correct?
 20 **A. For traffic stops, yes.**
 21 MR. RASKIN: Excuse me,
 22 Joe. I'm going to object to the use of
 23 this exhibit as being marked because it's
 24 highlighted. I think you may have given
 25 us your copy.

1 MR. SCOTT: Let me switch
 2 that. I'll give you that and we'll remark
 3 that.
 4 MR. RASKIN: Thank you.
 5 BY MR. SCOTT:
 6 Q. Go ahead.
 7 MR. RASKIN: You want to
 8 read back the question or withdraw it and
 9 ask it again? Sorry to interrupt you.
 10 MR. SCOTT: No, no. It's
 11 quite all right.
 12 Q. Officer Miller, if I'm reading this correctly
 13 underneath the caption high risk stops, it indicates
 14 special procedures shall be utilized when stopping and
 15 approaching suspected or confirmed felony violators or
 16 other high risk stops, correct?
 17 **A. Traffic stops, correct.**
 18 Q. Okay. So if you're trying to stop -- you
 19 believe that if you're trying to stop a vehicle for
 20 something other than a traffic stop, this policy would
 21 not apply?
 22 **A. You used the word trying. This is referencing**
 23 **the actions of the officer when the vehicle has come to**
 24 **a stop. It's a traffic stop. This isn't the process**
 25 **by which.**

1 **This is implying that they're compliant and pull**
 2 **over knowing what we're dealing with as the occupants.**
 3 Q. Let me make sure. Let's look at section 2 under
 4 B, high risk stop. It states the officer will keep the
 5 suspect vehicle in view and request sufficient
 6 assistance to make the stop. So you understand that to
 7 be a voluntary stop by the driver of the vehicle?
 8 **A. That's the -- this is speaking of when the plan**
 9 **-- the planned initiating of a stop is to take place.**
 10 **It's not describing -- it's describing what the officer**
 11 **should be thinking of and doing prior to initiating**
 12 **this stop, allowing other officers to get close and get**
 13 **in place in case it turns into something worse and they**
 14 **do not comply and they do not stop.**
 15 Q. So your understanding is that this policy
 16 wouldn't have any application under circumstance where
 17 the driver of the suspect vehicle does not voluntarily
 18 come to a stop?
 19 **A. That's correct.**
 20 Q. All right. What written policies exist within
 21 the City of Strongsville for stopping a vehicle where
 22 the driver of the suspect vehicle does not voluntarily
 23 stop?
 24 **A. We have a pursuit policy. And during that**
 25 **pursuit if that person voluntarily stops and that**

1 **person stops and is compliant, then we would revert**
 2 **back to the high risk stops.**
 3 Q. Okay. What written policy exists for a
 4 situation where the driver of the suspect vehicle does
 5 not voluntarily stop?
 6 **A. That would be our pursuit policy.**
 7 Q. Okay. Did you want to take a break?
 8 MR. RASKIN: Excuse me,
 9 Joe.
 10 Do you need to, or do you still have
 11 some time?
 12 THE WITNESS: We started 10
 13 after 10:00?
 14 MR. RASKIN: Yeah.
 15 THE WITNESS: We're good.
 16 Go to the top of the hour.
 17 MR. RASKIN: Joe, just to
 18 give you a heads up, about 30 minutes.
 19 MR. SCOTT: I was trying
 20 to watch that myself.
 21 MR. RASKIN: Thank you.
 22 Madam reporter, would you remark
 23 this?
 24 (Thereupon, Plaintiffs' Exhibit 12 to
 25 the deposition of OFFICER WILLIAM JASON

1 MILLER was remarked for identification.)
 2 BY MR. SCOTT:
 3 Q. While I'm getting this ready to mark, Officer,
 4 looking back at Plaintiffs' Exhibit 12, section B and
 5 specifically looking at the section B 6, paragraphs A
 6 and B, I want to ask you the tactics, if you will, that
 7 are described in Plaintiffs' Exhibit 12, section B 6, A
 8 and B. Does that basically define the procedures for
 9 performing a felony call out stop?
 10 **A. Yes.**
 11 MR. SCOTT: Mark this as
 12 13, please.
 13 (Thereupon, Plaintiffs' Exhibit 13 to
 14 the deposition of OFFICER WILLIAM JASON
 15 MILLER was marked for identification.)
 16 Q. Officer Miller, handing you what we've marked as
 17 Plaintiffs' Exhibit 13.
 18 MR. RASKIN: Hang on a
 19 second.
 20 Q. Take a minute and look at that.
 21 MR. RASKIN: Go ahead, Joe.
 22 Q. Officer, what I've handed you as Plaintiffs'
 23 Exhibit 13 is an -- I think it's captioned motor
 24 vehicle pursuits; is that correct?
 25 **A. Yes.**

1 Q. Are there any other written policies by the City
 2 of Strongsville concerning motor vehicle pursuits other
 3 than what's contained in Plaintiffs' Exhibit 13?
 4 **A. No.**
 5 Q. Okay. Can I have it back, please? Thank you.
 6 I wanted to back up for a second. On
 7 Plaintiffs' Exhibits 5, 6 and 7, these were the
 8 performance evaluations that we looked at before. Do
 9 you recall the meetings that you would have had with
 10 the shift sergeant following each of these particular
 11 performance evaluations?
 12 **A. Only one of them.**
 13 Q. Which one do you recall?
 14 **A. The one dated 1-1-15 to 4-30-15.**
 15 Q. What do you recall about that?
 16 **A. This particular evaluation was reviewed with me**
 17 **by Tom O'Deens.**
 18 Q. Okay.
 19 **A. And, again, I don't remember if he was a**
 20 **sergeant or lieutenant at the time.**
 21 Q. Okay. Anything else you recall about that
 22 meeting?
 23 **A. Yes.**
 24 Q. And please tell me.
 25 **A. Some of the handwritten notes I remember having**

1 **discussion about.**
 2 Q. Okay. Which ones in particular?
 3 **A. The time sheets and the reports.**
 4 Q. And what do you recall discussing with Officer
 5 O'Deens?
 6 **A. At the time Officer Glover and I were wearing**
 7 **two hats, so to speak. I was assigned to patrol and I**
 8 **was also handling most of or all of the narcotics**
 9 **interdiction work that the bureau did not do. Glover**
 10 **and I maintained all of the narcotics investigations.**
 11 **And so at the time I was -- I had many reports**
 12 **sitting on my desk that were based on waiting for**
 13 **certain subjects of those reports to decide whether or**
 14 **not they wanted to work or were currently working with**
 15 **us. And so those reports were sitting on our desk for**
 16 **quite a long time waiting for the outcome of the**
 17 **opportunities to perform based on what the prosecutor**
 18 **wanted to see happen.**
 19 **And so there was a time when there were time**
 20 **sheets built up because we didn't -- it was very rare**
 21 **that we could incur overtime while doing the vice work**
 22 **or the narcotics work as well as doing patrol work. So**
 23 **we had to keep individual time sheets separate from**
 24 **what is normal to patrol where they just clock in.**
 25 **And sometimes with normal patrol work and**

1 **narcotics work a lot of stuff blended together. And it**
 2 **was difficult to keep on top of all the paperwork.**
 3 **From the patrol side it was they had an expectation of**
 4 **certain reports to be done on time. And our hours were**
 5 **-- we often incurred extra hours that normally would**
 6 **have been overtime, but we had to keep track of those.**
 7 **So there was difficulty in understanding how**
 8 **those extra hours translated to hours that we had to**
 9 **take off from the patrol side, and there was quite a**
 10 **bit of difficulty going back and forth at that time.**
 11 Q. Okay. So I think what you're telling me is you
 12 felt that the rating was undeserved, given what was
 13 being asked of you at the time and the time constraints
 14 that you were operating under.
 15 **A. Well, not necessarily. What I'm saying is that**
 16 **we were bogged down and this whole process was new to**
 17 **both patrol and the bureau having two guys that were**
 18 **assigned to patrol full time but while also handling**
 19 **almost full time narcotics. And so there was a time**
 20 **when it was a learning curve for all of us to figure**
 21 **out exactly how to get this more efficient.**
 22 Q. Okay. Any other written notes that you recall
 23 discussing with Officer O'Deens at that time?
 24 **A. Yes.**
 25 Q. Please tell me about those.

- 1 **A. Giving the dispatchers a hard time.**
 2 Q. Okay. What was that about?
 3 **A. Specifically at that time we were doing quite a**
 4 **bit of narcotics work and at the time it was pretty**
 5 **dangerous. And there were times when we had**
 6 **dispatchers who weren't familiar with that type of**
 7 **work. And we would have difficulty in getting the**
 8 **information that we needed as soon as possible rather**
 9 **than when they got around to it. We needed to make**
 10 **sure they understood the priority when we were on the**
 11 **road.**
 12 **And there were times when we had disagreements**
 13 **on, or personal conflict on how important it was. In**
 14 **fact, I think that evolved -- that was part of -- even**
 15 **possibly that discussion evolved into when we were**
 16 **doing our narcotics work, we would have a separate**
 17 **dispatcher assigned to us to handle the workload.**
 18 Q. Were those disagreements something that occurred
 19 on more than one occasion?
 20 **A. Yes.**
 21 Q. Okay. Was there anything else that you
 22 understood formed the basis for the notes that you're
 23 referencing other than your disagreements with
 24 dispatchers?
 25 **A. For line 3?**

- 1 Q. Yes, sir.
 2 **A. No.**
 3 Q. Anything else, any other notes, and we're
 4 looking at, what, Exhibit 7?
 5 **A. Yes.**
 6 Q. Anything else that you recall discussing with
 7 Officer O'Deens relative to Plaintiffs' Exhibit 7?
 8 **A. Yes.**
 9 Q. Please tell me.
 10 **A. The part where it says mumbles on the radio.**
 11 Q. Yes.
 12 **A. I'm rather soft spoken, and at the time I was**
 13 **fresh out of doing a lot of undercover work and it took**
 14 **me quite a long time to get used to bringing the mic**
 15 **back to my mouth, because when you're undercover out in**
 16 **the world, you don't bring the mic to your mouth,**
 17 **you'll give yourself away.**
 18 Q. Okay.
 19 **A. And it was quite difficult breaking that habit**
 20 **of never bringing the radio to your mouth when you**
 21 **speak. And so that was one of the things we had a**
 22 **discussion about.**
 23 Q. Anything else?
 24 **A. Not sure line 4.**
 25 Q. Any other notes on Plaintiffs' Exhibit 7 that we

- 1 haven't discussed that you recall discussing with
 2 Officer O'Deens?
 3 **A. Yes.**
 4 Q. Please tell me.
 5 **A. Line 6 where it says incomplete paperwork, that**
 6 **was basically rehashing the reports sitting on my desk**
 7 **for quite a long time waiting on informants and court**
 8 **paperwork, and it just takes a long time.**
 9 Q. Okay.
 10 **A. As well as the written warnings.**
 11 Q. Any other notes?
 12 **A. Yes, written warnings.**
 13 Q. That's 7?
 14 **A. Yes.**
 15 Q. Please tell me about that.
 16 **A. That's under 6 on 7, is that what you mean?**
 17 Q. Well, you tell me what you recall discussing
 18 with Officer O'Deens regarding --
 19 **A. Where it says owner, there was a time when we**
 20 **went to a new type of written warnings rather than a**
 21 **tiny little piece of paper. And I understood that it**
 22 **was okay to circle owner as part of filling it out. So**
 23 **I would circle owner, much like we do with our parking**
 24 **violations. Rather than putting all of the address and**
 25 **owner's information, we would circle owner.**

- 1 **And so for a while I had been turning in written**
 2 **warnings for stopping somebody and writing a warning.**
 3 **I would fill out vehicle information and circle owner,**
 4 **rather than filling it all out. And that's part of**
 5 **that discussion.**
 6 Q. Okay. Any other notes on Plaintiffs' Exhibit 7
 7 that you recall discussing with Officer O'Deens?
 8 **A. No.**
 9 Q. Okay. And I take it from your earlier answer
 10 you don't recall any discussions with whoever the
 11 sergeant may have been relative to Plaintiffs' Exhibits
 12 5 or 6.
 13 **A. No.**
 14 Q. Okay. And I don't know if I asked you earlier.
 15 Did you ever meet with Chief Kobak during his tenure as
 16 Chief directly concerning your performance as a police
 17 officer?
 18 MR. RASKIN: You did ask
 19 that question.
 20 MR. SCOTT: Did I ask
 21 that?
 22 MR. RASKIN: But you can
 23 answer.
 24 **A. No.**
 25 Q. Thank you.

1 Okay. I want to go back to the BCI interview
 2 statement that we marked earlier in the deposition. Do
 3 you still have that?
 4 **A. Yes.**
 5 Q. And, again, this was prepared from your meeting
 6 with Special Agent Charles Moran of the Bureau of
 7 Criminal Investigation approximately one week after the
 8 events of March 7th, 2017, correct?
 9 **A. Yes.**
 10 Q. And on the last page of that exhibit there's a
 11 notification with your name and signature there; is
 12 that correct?
 13 **A. Yes.**
 14 Q. Dated 3-14-17. Is it ten o'clock or 1000 hours?
 15 **A. Yes.**
 16 Q. So that was the time of the interview?
 17 **A. Yes.**
 18 Q. Okay. Had you done anything to prepare for that
 19 interview?
 20 MR. RASKIN: Objection.
 21 You may answer that question,
 22 however, since you were present with
 23 counsel, you may not disclose any
 24 information from your preparation with
 25 counsel.

1 **A. Yes.**
 2 Q. What did you do to prepare for the interview
 3 with Special Agent Moran?
 4 **A. I watched some of the cruiser in dash -- the**
 5 **dash cam cruiser videos of the pursuit, but not all of**
 6 **them.**
 7 Q. Okay. Anything else?
 8 **A. I may have read Steving's report in our CAD**
 9 **system. He was the only one that typed a narrative.**
 10 Q. Okay. Do you know why that was?
 11 **A. Why it was?**
 12 Q. Yeah. That Officer Steving was the only one
 13 that typed a narrative?
 14 **A. I do not know.**
 15 Q. Would it be typical that all the officers
 16 involved in the incident would have typed a narrative?
 17 **A. Not always, no.**
 18 Q. Well, is it required in a use of force incident
 19 that any officer using force type a narrative
 20 concerning the force they used in that event?
 21 **A. I don't think it specifically says type a**
 22 **narrative, but you're expected to give a statement as**
 23 **part of the report.**
 24 Q. Okay. Please tell me anything else you recall
 25 doing to prepare for the March 14th, 2017 interview.

1 **A. I don't specifically recall as preparing. I may**
 2 **have heard Ms. Pauley's conversations on the phone.**
 3 Q. Okay. Were those provided to you?
 4 How did you obtain those?
 5 **A. Those were provided by a dispatcher to Officer**
 6 **Glover.**
 7 Q. Okay. And did Officer Glover then provide them
 8 to you?
 9 **A. Yes.**
 10 Q. Do you know how those phone conversations were
 11 obtained?
 12 **A. How they were actually put onto a piece of**
 13 **media, or can you specify?**
 14 Q. No. Let me ask it this way: is it your
 15 understanding that those were phone calls that
 16 Amanda Pauly made to various individuals in the early
 17 morning hours of March 7th, 2017 after she had returned
 18 to the Strongsville Police station?
 19 **A. Did I know what they were? Yes.**
 20 Q. And to your knowledge is there any -- did
 21 anybody tell Ms. Pauley that her conversations were
 22 being recorded?
 23 **A. I wasn't present for that. No.**
 24 Q. Okay. Were you aware of any signage here in the
 25 Strongsville Police Department that cautions those

1 using the phones here that their conversations may be
 2 recorded?
 3 **A. There may be in the jail, but not that I'm**
 4 **familiar with on station.**
 5 Q. Well, it's your understanding that she used a
 6 phone here at the station, correct?
 7 **A. Yes.**
 8 Q. Did anybody ever tell you that they had
 9 Ms. Pauley's permission to record her telephone
 10 conversations?
 11 **A. No.**
 12 Q. I'm sorry, did you tell me would it have been
 13 Officer Glover who provided you with a summary of those
 14 phone conversations or the conversations themselves?
 15 MR. RASKIN: Objection.
 16 That mischaracterizes the evidence.
 17 Why don't you answer the question
 18 again.
 19 **A. Ask the question again.**
 20 Q. Yeah. Well, let me ask you again, did Officer
 21 Glover provide you with the tape recordings themselves
 22 of those phone conversations?
 23 **A. They weren't on tape. It was an e-mail sent to**
 24 **him with them digitally put onto an e-mail format.**
 25 **Yes.**

1 Q. So you were able to hear the digital file of the
2 actual phone calls?
3 **A. I heard files. I don't know how complete they**
4 **were. I don't know how many phone calls there were. I**
5 **heard calls. I don't remember how many there were that**
6 **she actually made versus what we received.**
7 Q. In addition to hearing the audio files did
8 Officer Glover send you any sort of summary of those
9 phone calls?
10 **A. Yes.**
11 Q. Okay. Were you provided with any other
12 information prior to your interview on March 14th,
13 2017?
14 MR. RASKIN: Objection.
15 That mischaracterizes his testimony. He
16 said he wasn't sure when he received that
17 in relation to his interview.
18 BY MR. SCOTT:
19 Q. What I've been asking you about are things that
20 you were able to review prior to your interview.
21 **A. I think I started that by saying I wasn't sure**
22 **if I got those prior to or not.**
23 Q. Okay.
24 **A. What I said was I may have.**
25 Q. I see. Well, let me ask you about information.

1 We've talked about some of the video. We talked about
2 possibly Officer Steving's incident report. And I
3 understand that you may or may not have actually
4 received or heard the phone conversations involving
5 Amanda Pauley prior to your interview.
6 Is there anything else that you specifically
7 remember reviewing prior to your March 14th, 2017
8 interview?
9 **A. No.**
10 Q. Okay. If we look at page 4 of that interview,
11 and I'm sorry, we marked that as Plaintiffs' Exhibit --
12 **A. 9.**
13 Q. -- 9. You were discussing with Special Agent
14 Moran what happened as you approached the van.
15 MR. RASKIN: You want to
16 point him to a paragraph?
17 BY MR. SCOTT:
18 Q. And I'm looking at the first full paragraph on
19 page 4. And this is after the van has spun out. And
20 you stopped your vehicle. Okay?
21 **A. Yes.**
22 Q. First of all, did you radio or tell any of the
23 other officers involved in this pursuit prior to
24 exiting the vehicle that you intended to exit your
25 vehicle and rush the van?

1 **A. No.**
2 Q. And I'm correct that Sergeant Kelley was in
3 charge of this pursuit, correct?
4 **A. Yes.**
5 Q. And that was always the case, Sergeant Kelley
6 was always in charge of the pursuit throughout the
7 entirety of the event, correct?
8 **A. Yes.**
9 Q. So you never communicated to him your intention
10 to exit your vehicle and rush the van, correct?
11 **A. No.**
12 Q. Do you recall how long it was between the time
13 you exited your vehicle and you actually reached the
14 driver's side door of the van?
15 **A. No.**
16 Q. Do you know if it was a matter of seconds?
17 **A. I don't recall.**
18 Q. You indicate during this time, and I'm reading
19 about the middle of the paragraph, first full
20 paragraph, you say, now I had a real good view of the
21 driver from all my lights and everything. So you could
22 see clearly -- you could see Mr. Evans clearly inside
23 the van; is that correct?
24 **A. Yes.**
25 Q. And you could see Ms. Pauley inside the van at

1 that time?
2 **A. I don't recall exactly when I saw her**
3 **specifically. I saw him. I don't remember how many**
4 **moments passed that I recognized her.**
5 Q. Well, you were aware that there was a front seat
6 passenger in the van before the van ever stopped,
7 correct?
8 **A. Yes.**
9 Q. Okay. In your mind as you approached the van
10 had this pursuit terminated?
11 **A. No.**
12 Q. When did this pursuit terminate as you
13 understood?
14 **A. When we removed Mr. Evans from the vehicle.**
15 Q. So not until after Mr. Evans had been shot and
16 removed from the vehicle was this pursuit over as far
17 as you were concerned, correct?
18 **A. Correct.**
19 Q. You indicate as you're looking through the
20 driver's side window, is that correct, as you're
21 approaching the van?
22 **A. Not just that window.**
23 Q. Okay. What parts of the van were you able to
24 see through and observe the driver?
25 **A. Well, I could only see the driver through the**

1 **driver's side window, but I was also looking through**
 2 **the windows behind him.**
 3 Q. Okay. Could you see anybody inside the van or
 4 anything inside the van as you looked through the
 5 windows behind the driver?
 6 **A. At what point?**
 7 Q. As you approached the van.
 8 **A. Not initially, no.**
 9 Q. Okay. Subsequently as you got closer to the van
 10 could you see anything inside the van through the other
 11 windows, the windows behind the driver?
 12 **A. At this point I don't recall exactly when I saw**
 13 **the children in the back moving around and recognized**
 14 **that there was at least one person back there.**
 15 Q. Well, do you recall realizing that somebody was
 16 in the back of the van before or after the first shot
 17 was fired?
 18 **A. Yes.**
 19 Q. Which was it, before or after?
 20 **A. Before.**
 21 Q. So before the first shot was fired you were
 22 aware there was a driver, there was a front seat
 23 passenger, and there was at least one passenger in the
 24 rear of the van?
 25 **A. I think what I testified was in fact I couldn't**

1 **recall if it was just before or just after. I want to**
 2 **say it was as I engaged him, I saw the head of someone**
 3 **moving around between the seat and the pillar where the**
 4 **seat belt would attach to the wall. I could see**
 5 **someone moving around there, or it was through the**
 6 **curve of the window at the lower portion of the rear**
 7 **window where it meets the door.**
 8 Q. Okay. And I just want to understand at what
 9 point in time do you recall observing that, was that
 10 before or after the first shot was fired?
 11 **A. I still can't say. I really just -- I was not**
 12 **100 percent sure when I gave the statement and I want**
 13 **to say it was before, but I can't say specifically.**
 14 MR. RASKIN: He needs to
 15 take a break.
 16 MR. SCOTT: Okay. That's
 17 fine. Thank you.
 18 (Thereupon, there was a recess.)
 19 BY MR. SCOTT:
 20 Q. Officer Miller, we were going through your
 21 interview with Special Agent Moran dated March 14th of
 22 2017. And I had been asking you about what you were
 23 able to observe as you approached the van after it had
 24 spun out. You exited your cruiser and began
 25 approaching the van.

1 You indicated to me you could see -- through
 2 the driver's side door you could see Mr. Evans,
 3 correct?
 4 **A. Yes.**
 5 Q. And you recall as you approached, got closer to
 6 the van at some point you could see through the windows
 7 behind the driver's side door into the back of the van;
 8 is that correct?
 9 **A. Yes.**
 10 Q. And this is all prior to you opening the door on
 11 the van, correct?
 12 **A. Yes.**
 13 Q. Okay. And we can agree that ultimately you
 14 opened the door on the van as opposed to Mr. Evans
 15 opening it or someone else opening the door; is that
 16 correct?
 17 **A. That's correct.**
 18 Q. Okay. I want to ask you about the last full
 19 paragraph on page 4. It begins Officer Miller
 20 continued, so when I stood up I initially started to
 21 draw my gun and immediately saw the passenger female.
 22 And I want to understand at what point in time
 23 specifically you're referencing when you say so when I
 24 stood up. Do you mean when you stood up as you got out
 25 of your cruiser, or at some other point?

1 **A. Yes. It's not the first time I saw her. I**
 2 **guess what I should have said is I realized her in the**
 3 **background.**
 4 Q. Okay. And when you stood up, you're referring
 5 to standing up as you got out of your car?
 6 **A. Correct.**
 7 Q. So approximately how far were you from the van
 8 from where you were standing outside your car door?
 9 **A. I don't know the answer to that.**
 10 Q. Okay. Do you have an estimate of how far away
 11 you were?
 12 **A. No, I don't.**
 13 Q. Let me ask it this way: when the van spun out in
 14 front of you I think you indicated in your statement
 15 you tried to position your car so as to block the
 16 driver's side door so nobody could bail from the
 17 vehicle; is that fair?
 18 **A. That's correct.**
 19 Q. And you actually ended up making contact with
 20 the side of the van behind the driver's door; is that
 21 correct?
 22 **A. Yes.**
 23 Q. Okay. When you exited your vehicle was your
 24 vehicle still in physical contact with the van, still
 25 touching the van?

- 1 **A. I don't recall.**
 2 Q. Okay. Can we agree that whether it was actually
 3 touching the van or not, the front end of your vehicle
 4 would have been in very close proximity to the side of
 5 the van?
 6 **A. That's correct.**
 7 Q. Within a foot or so; is that fair?
 8 **A. Yes.**
 9 Q. Okay. So really the distance you would have
 10 been from the driver's side door of the van from your
 11 position as you were exiting your car would have been
 12 whatever the length of your car is from the front to
 13 the back of your driver's door; is that fair?
 14 **A. Yes.**
 15 Q. And when you stand up as you're getting up out
 16 of your car you say I saw him plain as day. So you
 17 could clearly see inside the van at this point?
 18 **A. I could see his left side plain as day from**
 19 **about his elbow up is what I believe I said.**
 20 Q. Okay. And what you observed at that time was
 21 that Mr. Evans had his left hand on the steering wheel,
 22 correct?
 23 **A. Correct.**
 24 Q. And his right hand on the gear shift?
 25 **A. That's correct.**

- 1 Q. Okay. And you believed that he was trying to
 2 maneuver the gear shift in some manner; is that
 3 correct?
 4 **A. Yes.**
 5 Q. Okay. And you said this was just before and
 6 just after he made contact with Sergeant Kelley; is
 7 that correct?
 8 **A. Just after and just before.**
 9 Q. Okay.
 10 **A. Well, that's not true.**
 11 Q. Okay.
 12 **A. Ask that question again, please.**
 13 Q. Let me ask you this, and I'm just reading it
 14 from the statement. Let me read what's written here on
 15 the exhibit. I saw him plain as day with his left hand
 16 on the steering wheel and his right hand trying to
 17 jimmy or maneuver the -- work the gear selector just
 18 before and just after he made contact with Sergeant
 19 Kelley. Do you see that?
 20 **A. Which paragraph are we at?**
 21 Q. I'm looking at the final paragraph on page 4.
 22 MR. RASKIN: Can I point it
 23 to him?
 24 MR. SCOTT: Oh, please
 25 please. Yes. Thank you.

- 1 **A. Okay. Ask the question again, please.**
 2 Q. Well, first of all, did I read that correctly?
 3 **A. Well, read it again because I don't remember**
 4 **what you said.**
 5 Q. Okay. I saw him plain as day with his left hand
 6 on the steering wheel and his right hand trying to
 7 jimmy the or maneuver the -- work the gear selector
 8 just before and just after he made contact with
 9 Sergeant Kelley.
 10 **A. Yes, you read that correctly.**
 11 Q. Okay. And is that what you recall?
 12 **A. Yes.**
 13 Q. Okay. You had said before you thought something
 14 was not correct. Is what's written here as you recall
 15 correct?
 16 **A. That's specific to that moment, yes.**
 17 Q. Okay. And when you say just before and just
 18 after he made contact with Sergeant Kelley, you're
 19 talking about the last time that the van made contact
 20 with Sergeant Kelley's vehicle; is that correct?
 21 **A. No.**
 22 Q. Okay. So was there further contact between the
 23 van and Sergeant Kelley's vehicle after this moment
 24 that you're describing?
 25 **A. At that moment he had just made contact, and it**

- 1 **was clear by his actions trying to put it in reverse**
 2 **and revving the engine that he was trying to put it in**
 3 **reverse to do the same thing again. So that is just**
 4 **before and just after.**
 5 Q. Okay. So there was a subsequent contact between
 6 the van and Sergeant Kelley's vehicle?
 7 **A. Which time?**
 8 Q. After this.
 9 **A. After what?**
 10 Q. After the moment you're describing in this final
 11 paragraph on page 4.
 12 **A. You're asking if there was another one?**
 13 Q. Yes.
 14 **A. No.**
 15 Q. Okay. Let me see if I understand what you're
 16 trying to tell me. After the van spins out --
 17 **A. Yes.**
 18 Q. -- am I correct that the van and Sergeant
 19 Kelley's vehicle made contact twice?
 20 **A. Yes.**
 21 Q. Okay. And the second -- has the second contact
 22 occurred as you're standing there outside your vehicle
 23 looking in and seeing Mr. Evans, the left hand on the
 24 steering wheel and the right hand on the gear shift?
 25 **A. Yes.**

1 Q. Okay. There was no further contact between the
 2 van and Sergeant Kelley's vehicle after that point in
 3 time, correct?
 4 MR. RASKIN: Objection as
 5 to form. After what point in time?
 6 MR. SCOTT: The point in
 7 time that's described in this final
 8 paragraph, the second contact.
 9 BY MR. SCOTT:
 10 Q. You said both contacts had occurred as you're
 11 standing there outside.
 12 **A. What I said was just before and just after. I**
 13 **didn't say the second time. I said worked the gear**
 14 **selector just before and just after he made contact**
 15 **with Sergeant Kelley.**
 16 Q. Okay. So let me go back again just so I
 17 understand what you have to tell us. Was there a
 18 subsequent contact between the van and Officer Kelley's
 19 vehicle after this moment?
 20 **A. What I'm referencing in that statement is I was**
 21 **expecting him to do that again and that would be the**
 22 **part that I described as just before. I expected him**
 23 **trying to put it in reverse to repeat what he had just**
 24 **done to hit Sergeant Kelley.**
 25 Q. Okay. And did the van ever hit Sergeant

1 Kelley's vehicle again after this moment?
 2 **A. For a third time after he spun out, no.**
 3 Q. Okay. So whatever contact there was between the
 4 van and Officer Kelley's vehicle had completed as you
 5 were standing there outside your vehicle exiting your
 6 vehicle; is that fair?
 7 **A. Yes.**
 8 Q. So there was no further contact between the van
 9 and Sergeant Kelley's vehicle as you approached the
 10 van; is that fair?
 11 **A. That's fair.**
 12 Q. And you indicate in your statement following
 13 that last paragraph on page 4 and the very, very
 14 beginning of page 5, you indicate because you could see
 15 both of Mr. Evans' hands you decided to just open the
 16 door and pull him out.
 17 **A. That's correct.**
 18 Q. So immediately before you opened the door of the
 19 van you could see both of Mr. Evans' hands; is that
 20 correct?
 21 **A. That's correct.**
 22 Q. Okay. You've seen the video, the dash cam
 23 video, correct?
 24 **A. Yes.**
 25 Q. Do you know how much time passes between the

1 time you opened the door and the time the first shot is
 2 fired?
 3 **A. Specifically, no.**
 4 Q. No recollection at all?
 5 **A. If you're asking me to give you a few seconds**
 6 **versus minutes, it's a few seconds.**
 7 Q. Okay. Well, is it even a few seconds?
 8 **A. I can't specify. I don't know for sure.**
 9 Q. Whatever appears on the video, that's what it
 10 is, right?
 11 **A. Yes.**
 12 Q. Okay. Prior to approaching the vehicle as the
 13 van was spinning out you had observed that as a result
 14 of hitting the stop strips one of the front tires on
 15 the van had been deflated, correct?
 16 **A. No, that's not correct.**
 17 Q. Tell me what it is.
 18 **A. The first thing I observed was the rear tire was**
 19 **falling apart and then moments later observed the front**
 20 **tire deflating.**
 21 Q. And when you say falling apart, actually coming
 22 apart and coming off the vehicle, correct?
 23 **A. Yes.**
 24 Q. So at the point in time when the van is stopped
 25 and you're exiting your vehicle at least one of the

1 rear tires is completely gone, correct?
 2 **A. The van wasn't stopped.**
 3 Q. I understand. But one of the rear tires was
 4 completely gone; is that correct?
 5 **A. At which point?**
 6 **When he made the second contact after spinning**
 7 **out, yes.**
 8 Q. And at that same point in time at least one of
 9 the front tires was deflated?
 10 **A. It looked low and it was losing air, but I don't**
 11 **know to what status it was.**
 12 Q. Okay. Do you know what condition the other two
 13 tires on the van were in?
 14 **A. Not until later, no.**
 15 Q. Okay. You indicate in the next paragraph that
 16 you were afraid that the van was going to back up and
 17 pin you between your car and the door because you were
 18 essentially between your front bumper and the van.
 19 MR. RASKIN: Again, I'm
 20 just going to point him to where you're
 21 at.
 22 MR. SCOTT: Yes, please.
 23 Thank you.
 24 MR. RASKIN: The top of
 25 this part.

1 BY MR. SCOTT:
 2 Q. Do you see that?
 3 **A. Yes.**
 4 Q. Okay. Let me ask you, have you received
 5 training on what to do if a vehicle starts moving when
 6 you're at the side of the vehicle?
 7 **A. Well, I'd have to know the context and the**
 8 **specific situation to be able to say that.**
 9 Q. Well, in a situation like this have you received
 10 training on what to do?
 11 **A. When I was with the feds doing the undercover**
 12 **work on the drug task force there were multiple times**
 13 **where we trained for dynamic vehicle extractions which**
 14 **included a vehicle in traffic, the occupant or**
 15 **occupants were targets of an investigation, and we were**
 16 **going to perform a dynamic vehicle extraction which is**
 17 **very similar to the situation we had at hand at the**
 18 **moment that we're here for today.**
 19 Q. And was that training sort of a practice
 20 demonstration, if you will, or was it a classroom
 21 training; what form?
 22 **A. It was an actual physical we were out doing the**
 23 **work.**
 24 Q. So somebody was physically demonstrating what
 25 would be acceptable tactics; is that correct?

1 **A. Yes.**
 2 Q. Were you ever trained to simply step back away
 3 from a vehicle that might start moving as you
 4 approached it?
 5 **A. I don't recall specifically.**
 6 Q. Okay. That's something that may or may not have
 7 happened, you don't recall as you sit here today?
 8 **A. That's correct.**
 9 Q. You indicate that when you opened the door
 10 Mr. Evans was looking right at you; is that correct?
 11 **A. No, that's not correct.**
 12 Q. All right. What is correct?
 13 MR. RASKIN: Again, do you
 14 want him to read this paragraph; is that
 15 what you're asking?
 16 BY MR. SCOTT:
 17 Q. Let me ask you what you recall. Do you recall
 18 as you opened the door Mr. Evans was looking at you?
 19 **A. He wasn't looking at me until I opened the door**
 20 **and started to engage him, and he looked at me in**
 21 **shock.**
 22 Q. He looked at you in?
 23 **A. In shock. What I think I testified was that, or**
 24 **my statement was that he was as surprised as I was that**
 25 **the door opened. But he did not look at me prior to**

1 **that door coming open.**
 2 Q. So when you opened the door you recall that
 3 Mr. Evans had a surprised look on his face?
 4 **A. Yes.**
 5 Q. All right. And you don't recall Mr. Evans
 6 looking in your direction as you approached the
 7 vehicle?
 8 **A. He never did. He was intently focused on**
 9 **ramming Sergeant Kelley and moving him out of the way**
 10 **so he could escape. He never acknowledged my presence.**
 11 Q. Well, do you know if during the second contact
 12 between the van and Sergeant Kelley's vehicle if
 13 Sergeant Kelley's vehicle moved into the path of the
 14 van?
 15 **A. I don't know the answer to that. Or at the time**
 16 **I didn't know the answer to that.**
 17 Q. So you don't know if Mr. Evans drove at Sergeant
 18 Kelley's vehicle, or if Sergeant Kelley's vehicle
 19 pulled into Mr. Evans' path?
 20 **A. Right now today?**
 21 Q. At that time.
 22 **A. No, I did not.**
 23 Q. Do you know as you sit here today?
 24 **A. I know as I sit here today Sergeant Kelley tried**
 25 **to maintain the box and Mr. Evans backed up and rammed**

1 **him.**
 2 Q. Okay. So do you understand as you sit here
 3 today from looking at the vehicle that as Mr. Evans
 4 began to pull forward again, Sergeant Kelley positioned
 5 his vehicle into the path of the van?
 6 **A. The path in terms that he didn't have time to**
 7 **stop and couldn't help himself and made contact? I**
 8 **don't know what you're saying.**
 9 Q. Well, from looking at the videos --
 10 **A. Yes. They made contact, so he had to.**
 11 MR. RASKIN: This isn't a
 12 conversation. Let him ask his question.
 13 Answer his question.
 14 BY MR. SCOTT:
 15 Q. We watched the video and I suppose we can queue
 16 it up at some point. The van appears to be moving
 17 straight forward. The wheels aren't turned at the
 18 point in time that Sergeant Kelley pulls his vehicle
 19 further into the path of the van and then the van makes
 20 contact with Sergeant Kelley's vehicle. Have you seen
 21 that?
 22 **A. You're asking me to say that he wasn't already**
 23 **partially in front of him. I don't know where he was**
 24 **in relationship as that second movement forward began.**
 25 **I don't know if it was even necessary for him to pull**

1 forward. I don't know.
 2 Q. But what you see on the video is Officer
 3 Kelley's vehicle moving forward into the path of the
 4 van, correct?
 5 A. He may have already been into the path, so I
 6 can't agree with you on that.
 7 Q. Well, it's moving further into the path of the
 8 van.
 9 A. Yes.
 10 Q. Okay. When you opened the door could you see
 11 Mr. Evans, either of his hands?
 12 A. Yes.
 13 Q. What could you see?
 14 A. Both of his hands.
 15 Q. As you opened the door?
 16 A. Yes.
 17 Q. And where were they?
 18 A. On the steering. His left hand was on the
 19 steering wheel in about the 10:00 position and his
 20 right hand was on the gear selector.
 21 Q. So when you opened the door Mr. Evans' hands
 22 were still more or less in the same position that you
 23 had observed them when you first got out of your car?
 24 A. Yes.
 25 Q. Okay. So whatever occurred that made you fear

1 Mr. Evans might be reaching for a weapon occurred after
 2 you opened the van door?
 3 A. That's correct.
 4 Q. What do you recall what happened next?
 5 You had the door open. You see Mr. Evans' left
 6 hand on the steering wheel, right hand on the gear
 7 shift.
 8 A. What I do recall next? There was quite a bit
 9 going on.
 10 Q. Okay. Please tell me what you can remember.
 11 A. When I opened the door my intent was to go hands
 12 on because I could see his hands and he wasn't paying
 13 attention to me at the moment. I was quite surprised
 14 that the door opened. My intent was to go hands on and
 15 just pull him out of the vehicle before he could back
 16 up again.
 17 And as I started to give commands he turned --
 18 he recognized that the door was open. Somewhere in
 19 that moment of when the door comes open he may have
 20 turned to look at me prior to me giving commands or
 21 during the commands. I don't know if it was because
 22 the door came open and he felt the air exchange or
 23 heard the sirens suddenly louder. I don't know why he
 24 looked at me.
 25 But it was clear I caught him off guard. At

1 least my interpretation was I caught him off guard. I
 2 started to give commands with the expectation I was
 3 just going to put hands on and pull him out of the
 4 vehicle.
 5 As he did this and turned, he turned to his left
 6 to acknowledge my presence and his right hand came off
 7 the gear selector and went down below where I could no
 8 longer see it.
 9 Q. When Mr. Evans' hand came off the gear selector
 10 was he still seated upright in the front seat?
 11 A. Yes.
 12 Q. Could you see his left hand?
 13 A. It was still on the -- yes.
 14 Q. You think it was still on the steering wheel?
 15 A. I'm sure it was still on the steering wheel.
 16 Q. When you fired the first shot was Mr. Evans
 17 turned towards you?
 18 A. His face and head were turned towards me, but
 19 his body -- he did not blade, he did not square off if
 20 that's what you mean.
 21 Q. Yes, that is what I mean. At any time did he
 22 square off?
 23 A. No.
 24 Q. And I think you indicated in your statement, and
 25 I'm looking at the middle of that first full paragraph

1 that takes up most of the page on page 5, you indicated
 2 I decided to shoot him because of my close proximity.
 3 Do you see that?
 4 A. Yes.
 5 Q. All right. So you made the decision to fire
 6 because you were positioned so close to Mr. Evans?
 7 A. Well, that's a very broad statement.
 8 Q. Tell me what would be more accurate.
 9 A. Well, what this statement has to do with is
 10 everything that's going on at the moment. I didn't
 11 have an opportunity to retreat because he was clearly
 12 trying to still ram Sergeant Kelley and put his life in
 13 danger. Had I retreated he still would have had the
 14 opportunity to continue attacking Sergeant Kelley.
 15 He would have -- at that moment that he dipped
 16 and his put his hand down, had he come up with a
 17 weapon, he could have clearly engaged me and then my
 18 accuracy at that moment drops the farther I get away.
 19 So with the passenger as a back drop, that
 20 would have been a very terrible situation to try and
 21 take a shot or engage somebody. Not to mention I had
 22 Officer Plut and other officers that I was not aware
 23 of. I knew there were other officers coming on foot,
 24 but had anyone else engaged, it's quite possible -- at
 25 that moment I was the only person who knew there was

1 someone else behind him. And had Sergeant Kelley
 2 engaged him with a weapon, it's very possible those
 3 children would have been hit.
 4 So what I'm saying there in that moment is
 5 because I was so close to him, I clearly was the only
 6 one who had the opportunity to put this to an end by
 7 shooting him.
 8 Q. What you indicated in your statement on March
 9 14th, 2017 was simply I decided to shoot him because of
 10 my close proximity, correct?
 11 A. If you look at just that statement by itself,
 12 yes, that's what that reads.
 13 Q. Was there any reason why you could not have
 14 remained in your cruiser and performed a felony call
 15 out stop?
 16 A. Well, no felony call out stop, had he stopped
 17 and had he pulled over and complied, takes place with
 18 anyone inside their cruisers. Everyone exits their
 19 cruisers. So it would have been foolish for me to stay
 20 in my vehicle for any such event.
 21 Q. When you say everybody exits their cruisers, do
 22 they stay by their cruisers?
 23 A. They do.
 24 Q. Was there any reason why you couldn't have
 25 remained by your cruiser and called Mr. Evans out of

1 this van?
 2 A. Yes.
 3 Q. Why?
 4 A. The sirens were extremely loud. He was still in
 5 a manner of attacking Sergeant Kelley. He had no
 6 intention of stopping. This had not come to a stop.
 7 At no point did he come to a point we could do or
 8 perform a felony call out.
 9 Q. Well, you could have turned the sirens off if
 10 that was a problem, right?
 11 A. Depending on which car you're in, the car --
 12 some cars, the sirens turn off automatically when you
 13 put the car in park. And I wasn't prepared for that.
 14 My car, for whatever reason, the sirens did not turn
 15 off.
 16 Q. And the last order that was exchanged between
 17 you and the other officers in the pursuit was that you
 18 were going to perform a felony call out stop, right?
 19 A. No, that's not correct.
 20 Q. What was the last order exchanged between you
 21 and the other officers?
 22 A. That we were going to try to perform a rolling
 23 roadblock.
 24 Q. Okay. There had been an agreement to do a
 25 felony call out stop, correct?

1 A. If he had complied and come to a stop, correct.
 2 Q. In terms of approaching the vehicle, that was
 3 the last order that was given, correct?
 4 A. No, that's not correct.
 5 Q. What was the last order?
 6 A. That we were going to try to do another rolling
 7 roadblock.
 8 Q. Between the first and second shots what
 9 happened?
 10 A. The actions of Mr. Evans remained the same. He
 11 still posed a threat to Sergeant Kelley.
 12 Q. How did he --
 13 A. And to the occupants.
 14 Q. -- pose a threat?
 15 A. I could hear the engine revving. The engine was
 16 still revving, and I expected after the first shot that
 17 all of that would stop and it did not stop.
 18 Q. So because the engine was still revving,
 19 anything else that Mr. Evans did that you thought was
 20 threatening yourself or any other officers on scene?
 21 A. He was still trying to maintain -- his right
 22 hand was still below where I couldn't see it. So if he
 23 still had the wherewithal to have his foot on the
 24 accelerator, I expected that he still had the ability
 25 to raise his hand with a weapon.

1 Q. Okay. Well, do you know if he didn't raise his
 2 hand because he'd been shot?
 3 A. No, I don't know that.
 4 Q. Did you consider that?
 5 A. I don't know that I had time to.
 6 Q. So the engine is still revving, you can't see
 7 his right hand and you fire a second time; is that
 8 correct?
 9 A. Yes.
 10 Q. And how far do you think Ms. Pauley was away
 11 from Mr. Evans when you shot each time?
 12 A. Whatever the distance is between the passenger's
 13 seat and the driver's seat.
 14 Q. What about the distance between Mr. Evans and
 15 the children in the back of the van?
 16 A. Possibly closer.
 17 Q. Did any other officer on scene fire their
 18 weapons?
 19 A. No.
 20 Q. Did you see the location of the children in the
 21 back between the first and second shots?
 22 A. Well, we keep saying children. I don't know
 23 that I ever knew that they were children. I knew that
 24 there was a head there. I knew there was at least one
 25 person. So to be specific and say children, plural, I

1 **don't know the ages and I didn't know there was more**
 2 **than one person.**
 3 Q. Okay. Did you become aware of a person or
 4 persons, the location of a person or persons in the
 5 back seat between the first and second shots?
 6 MR. RASKIN: Objection.
 7 There was no back seat.
 8 BY MR. SCOTT:
 9 Q. Back area of the van between the first and
 10 second shots.
 11 **A. I think what my statement was I still can't**
 12 **recall if I was aware of the children just prior to the**
 13 **first shot or just after. However I do remember a**
 14 **child's voice crying somewhere in that moment. And I**
 15 **would have to refer to my statement on that one because**
 16 **I don't recall specifically.**
 17 Q. Okay. Whatever is in your statement would be an
 18 accurate depiction of certainly what you remembered
 19 back on March 14th, right?
 20 **A. Yes.**
 21 Q. Okay. What happened next as regards extracting
 22 Mr. Evans from the van?
 23 **A. Sometime about that moment after the second shot**
 24 **his hand came in to view and he -- there was a lot**
 25 **going on, you have to understand. The passenger was**

1 Q. And I don't want you to speculate. I'm sorry.
 2 I just want what you recall. And if you don't recall
 3 one way or the other, that's fine. And I appreciate
 4 that.
 5 **A. I don't recall.**
 6 Q. At any time after the second shots were fired,
 7 and at any time after that did Mr. Evans say anything
 8 to you?
 9 **A. Never.**
 10 Q. Did he say anything at all?
 11 **A. Never.**
 12 Q. Did he make any kind of sound, a groan or
 13 anything like that that you recall?
 14 **A. Those sirens were so loud, I just couldn't hear**
 15 **anything if he did say anything.**
 16 Q. Could you tell if Mr. Evans was still breathing
 17 at that point in time?
 18 **A. At which moment?**
 19 Q. After the second shot as you're extracting him
 20 from the --
 21 **A. No, I did not know if he was breathing. I had**
 22 **no idea if that round incapacitated him or not.**
 23 Q. Okay. After Mr. Evans was taken out of the van
 24 do you know if at any time you were able to detect
 25 breathing by Mr. Evans?

1 **extremely upset and animated. She had reached out to**
 2 **his shoulder and was pulling on his arm. There was**
 3 **lots of screaming, lots of crying.**
 4 I guess I would have to know -- if you asked me
 5 a specific question, I could answer it. But you're
 6 asking me a very broad question on quite a bit of
 7 information?
 8 Q. Let me ask you a specific question. You said
 9 Mr. Evans -- after the second shot Mr. Evans' right
 10 hand came in to view. Did I understand that correctly?
 11 **A. I'd have to refer to my statement, but I recall**
 12 **his right hand coming in to view, yes, after the second**
 13 **shot.**
 14 Q. And from your recollection did it come in
 15 to view as a result of some voluntary movement by
 16 Mr. Evans, or from you or possibly Officer Vlna pulling
 17 on Mr. Evans?
 18 **A. It had to have come in to view. I don't know**
 19 **why it came in to view. It was prior to Officer Vlna**
 20 **going to the car.**
 21 Q. Okay.
 22 **A. I think you're asking me to speculate why. I**
 23 **don't know why. I don't know if he brought his hand in**
 24 **to view or if the manner of the tugging on his arm**
 25 **brought it in to view. I don't know.**

1 **A. My primary concern at that moment had to do with**
 2 **stopping the bleeding. And the chaos was so**
 3 **overwhelming, all I could focus on was finding the**
 4 **wound and stopping the bleeding and getting EMS support**
 5 **and medical support from anyone else that was on the**
 6 **scene that could help out.**
 7 I don't know. I don't know if I at the moment
 8 knew that he was breathing or didn't know. I don't
 9 recall one way or another at this moment.
 10 Q. Okay. Do you recall any vital signs from
 11 Mr. Evans as he was being removed from the van and as
 12 medical treatment was being performed on him?
 13 **A. No, I don't.**
 14 Q. You indicate in your statement at one point as
 15 you were performing medical treatment Mr. Evans vomited
 16 some kind of fluid. Do you remember that?
 17 **A. Now that you bring that up, yes.**
 18 Q. Okay. Again, do you remember any other groans
 19 or sounds that may have been coming from Mr. Evans at
 20 this point?
 21 **A. I don't recall. I want to say that I recall**
 22 **that he still had a pulse or was still in some function**
 23 **alive until I asked for Plut to check the pulse and he**
 24 **said he couldn't find a pulse. Then it started to go**
 25 **downhill from there.**

1 **And I don't recall if that was just being**
2 **optimistic or everything that was going on at the**
3 **moment from doing CPR and him moving around from people**
4 **maneuvering him. But at that moment prior to Plut**
5 **saying he didn't have a pulse and he wanted to start**
6 **CPR I want to say he still had a pulse or was still**
7 **functioning.**
8 Q. Okay. And do you know for what period of time
9 that was that you were trying to administer first aid
10 to Mr. Evans until Officer Plut said I can't find a
11 pulse?
12 **A. It seemed like forever. I don't know.**
13 Q. Okay. So it might have been a number of
14 minutes; is that fair?
15 **A. Whatever the video shows. I really don't know.**
16 Q. Okay. Did you continue administering first aid
17 to Mr. Evans until EMS got on scene?
18 **A. I don't think so.**
19 Q. Would somebody else have stepped in and relieved
20 you?
21 **A. Yes.**
22 Q. Okay. Do you know how long it was between the
23 time of the second shot and when EMS arrived on scene?
24 **A. No, I don't.**
25 Q. Okay. After EMS came were you close in

1 proximity to Mr. Evans; were you still monitoring what
2 was going on with him when EMS arrived on scene?
3 **A. Once everything started to calm down and I was**
4 **removed from that immediate area I still can't remember**
5 **where I was, who I talked to, what I did at that**
6 **moment. I don't even remember getting back to the**
7 **police department.**
8 Q. Okay. Obviously at some point after the scene
9 was cleared you got back to the Strongsville Police
10 Department, correct?
11 **A. Yes.**
12 Q. Do you recall, did you or any of the other
13 officers involved in this incident use a cell phone or
14 call anybody?
15 **A. I remember multiple sergeants going back and**
16 **forth and on their city phones. I assume city phones.**
17 **I don't know. But on phones talking to supervisors,**
18 **talking to other officers that were trying to**
19 **coordinate day shift coming in and things like that.**
20 **I remember conversations like that, but to say what**
21 **phones they used, who they talked to, I can only**
22 **speculate.**
23 Q. Does every officer have a city issued phone, or
24 do you just carry a personal phone?
25 **A. No.**

1 Q. No, they --
2 **A. Not everybody has a city phone. Only**
3 **supervisors.**
4 Q. Okay. Do you carry a personal phone on duty?
5 **A. Not always.**
6 Q. Okay. As more times than not?
7 **A. Yes.**
8 Q. To your knowledge did the other officers, other
9 patrol officers carry personal cell phones while on
10 duty?
11 **A. I would say a majority of them do, but I don't**
12 **know how often.**
13 Q. I appreciate that. Did anybody ever ask to
14 inspect your personal cell phone as part of the
15 investigation into this incident?
16 **A. No.**
17 Q. To your knowledge did anybody ask to inspect the
18 personal cell phones of any other officers who were
19 involved in this incident?
20 **A. No.**
21 Q. It would be fair to say that during the time of
22 this pursuit and throughout its termination you didn't
23 know who was driving the van, correct?
24 **A. As to his identity?**
25 Q. Yes, sir

1 **A. No, I didn't.**
2 Q. You didn't have any information about Roy Evans,
3 correct?
4 **A. No.**
5 Q. Never heard of Roy Evans?
6 **A. No.**
7 Q. To your knowledge none of the other officers
8 involved in the pursuit knew who was driving the van,
9 correct?
10 **A. Correct.**
11 Q. Okay. I want to talk about the pursuit itself a
12 little bit. And I understand, I believe I'm correct,
13 correct me if I'm wrong, you became aware that I think
14 it was Sergeant Kelley was involved in a pursuit and
15 you were here at the Strongsville Police Department; is
16 that right?
17 **A. Yes.**
18 Q. Okay. And my understanding is this all started
19 about two o'clock in the morning; is that right?
20 **A. Yes.**
21 Q. And you were performing some duty here at the
22 Strongsville Police Department?
23 **A. I don't necessarily know I was performing a**
24 **duty, but I was on station.**
25 Q. And did you become aware through radio traffic

1 or something that Sergeant Kelley was requesting
 2 assistance in a pursuit?
 3 **A. Yes.**
 4 Q. And you were available to join in that effort,
 5 correct?
 6 **A. Yes.**
 7 Q. Okay. So you joined in the pursuit. Do you
 8 remember where exactly you joined in the pursuit?
 9 **A. At the Ohio Turnpike and Interstate 71**
 10 **southbound.**
 11 Q. Okay. And so you were up by the Ohio Turnpike.
 12 My understanding is this pursuit would have began when
 13 Sergeant Kelley was initially northbound on 71. Is
 14 that your understanding as well?
 15 **A. Yes.**
 16 Q. Were you ever part of the northbound leg of the
 17 pursuit?
 18 **A. No.**
 19 Q. Okay. So you would have joined either as the
 20 pursuit was turning or after it had turned southbound
 21 on 71; is that fair?
 22 **A. I guess I'd have to have your definition of**
 23 **joined.**
 24 Q. Well, when you consider to have joined the
 25 pursuit, where were you?

1 **A. When Mr. Evans turned south on Pearl, I was**
 2 **north on Pearl to intersect. And that's when I got out**
 3 **of the vehicle and was actually taking an action**
 4 **towards helping him, rather than just move into the**
 5 **area.**
 6 **So do you define that as partaking? That's**
 7 **where I got the spikes out by Valley Parkway expecting**
 8 **him to continue southbound.**
 9 Q. So let me ask about that then. So as Sergeant
 10 Kelley is pursuing the van northbound on 71, it exits
 11 at Pearl Road, right?
 12 **A. Yes.**
 13 Q. And you are on Pearl Road north?
 14 **A. Yes.**
 15 Q. Okay. And did you try and use stop strips or
 16 something at that point in time?
 17 **A. Based on his transmission that he had started**
 18 **southbound on Pearl, I got out of the vehicle at Valley**
 19 **Parkway and Pearl expecting that he would intersect my**
 20 **position where I would deploy stop sticks.**
 21 Q. All right. And what happened next?
 22 **A. About the time I got out of my cruiser and**
 23 **started to run to my trunk. Kelley transmitted that**
 24 **he's getting back on 71 to go southbound.**
 25 Q. Okay. And what did you do?

1 **A. I got back in the car and proceeded north to the**
 2 **Turnpike on ramp which is accessed by Pearl Road.**
 3 Q. Okay. And so when you were actually physically
 4 part of the pursuit, would it have been southbound on
 5 71 south?
 6 **A. Yes.**
 7 Q. And do you know about what mile marker you would
 8 have joined that pursuit?
 9 **A. Whatever mile marker is the actual ramp to get**
 10 **on 71 south from the Turnpike.**
 11 Q. Okay. And that's north of Route 82, correct?
 12 **A. That's correct.**
 13 Q. And do you know how many miles in total the
 14 pursuit covered?
 15 **A. No, I don't.**
 16 Q. Do you know how long you were engaged in the
 17 pursuit in terms of time?
 18 **A. No.**
 19 Q. Do you know at approximately what mile marker
 20 the first rolling roadblock was attempted?
 21 **A. I know the area, but I can't say to the specific**
 22 **mile marker.**
 23 Q. Do you know approximately where it was?
 24 **A. Yes.**
 25 Q. Where was that?

1 **A. Just south of Drake and just north of Boston**
 2 **Road.**
 3 Q. Okay. And do you know at approximately what
 4 point the first rolling roadblock was called off?
 5 **A. Yes.**
 6 Q. Approximately where was that?
 7 **A. Where or when?**
 8 Q. Where?
 9 **A. I don't recall where. Same general area. It**
 10 **was called off almost immediately after he made contact**
 11 **with me.**
 12 Q. So that attempt only lasted a few moments?
 13 **A. Maybe a mile.**
 14 Q. Okay. Now, in between the first attempted
 15 rolling roadblock and the second the Ohio State Highway
 16 Patrol deployed stop strips; is that right?
 17 **A. Yes.**
 18 Q. Do you know how far it was from where the first
 19 rolling roadblock was called off until the Ohio State
 20 Highway Patrol deployed stop strips?
 21 **A. No, I do not.**
 22 Q. Do you have a recollection in terms of time or
 23 distance?
 24 **A. I'd have to watch the video.**
 25 Q. Okay. What about between the time the van

1 encounters the stop strips and the second rolling
 2 roadblock is attempted, do you have a recollection in
 3 terms of time or distance --
 4 **A. No.**
 5 Q. -- as to how long that was?
 6 **A. No.**
 7 Q. Do you have a recollection as to how long you
 8 and the other officers were engaged in trying to
 9 perform the second rolling roadblock before it was
 10 called off?
 11 **A. The second rolling roadblock was never called**
 12 **off. It actually never took place.**
 13 Q. So you were just setting up for it when the van
 14 spun out?
 15 **A. Yes.**
 16 Q. Did you see at the time of the pursuit, and not
 17 from what you may have seen from video, but at the time
 18 of the pursuit were you able to see any contact between
 19 the van and any other vehicle involved in the pursuit,
 20 any other law enforcement vehicle?
 21 **A. Yes.**
 22 Q. What contact do you recall actually witnessing?
 23 **A. When Mr. Evans attempted to push me off the road**
 24 **during the first rolling roadblock.**
 25 Q. I'm sorry. I meant other than your vehicle did

1 you observe any physical contact between the van and
 2 any other vehicle involved in the pursuit?
 3 **A. Throughout the entirety?**
 4 Q. Yes.
 5 **A. Yes.**
 6 Q. What do you recall seeing?
 7 **A. When we were attempting to maneuver into the --**
 8 **for the second rolling roadblock, that's when Sergeant**
 9 **Kelley maneuvered to the passenger side area of the van**
 10 **while I was waiting for Officer Vlana to get up front**
 11 **and Officer Plut to come to the rear. I started to**
 12 **move in to the right side and that's when he went to**
 13 **the left and made contact with Sergeant Kelley.**
 14 Q. And were you actually able to see that contact
 15 between the two vehicles?
 16 **A. Yes.**
 17 Q. So you could see the driver's side of the van
 18 and I assume the passenger's side of Sergeant Kelley's
 19 vehicle from where you were?
 20 **A. Well, I could see the rear. I had a clear view**
 21 **of the rear of Mr. Evans' van and the front and**
 22 **passenger side -- well, the entire passenger side of**
 23 **Sergeant Kelley's vehicle until they made contact.**
 24 Q. And was this after the van had encountered the
 25 stop strips?

1 **A. Yes.**
 2 Q. Was this after the rear tire had started to come
 3 apart on the back of the van?
 4 **A. Yes.**
 5 Q. And was this after the one front tire appeared
 6 to deflate?
 7 **A. Yes.**
 8 Q. Have you received any specific training on
 9 de-escalation?
 10 **A. Yes.**
 11 Q. What training have you received?
 12 **A. Throughout the years. I know there was one**
 13 **class specifically that was in the interrogatories that**
 14 **we mentioned. I would have to look at my training, but**
 15 **de-escalation is in part of many classes to include**
 16 **firearms and tactics and rules of engagement like Fast**
 17 **at OSP.**
 18 Q. What is your understanding as to the purpose of
 19 de-escalation training?
 20 **A. Well, I've recently had a de-escalation class**
 21 **that I volunteered for in recent months, just last**
 22 **month I think. So to be able to separate that two days**
 23 **of information from information that I had received**
 24 **over the years is going to be very difficult. So to be**
 25 **able to say how it applied back then, I'm afraid I**

1 **would mix the two.**
 2 Q. I don't necessarily want you to separate the
 3 two. Why don't you tell me what you recall from this
 4 recent training?
 5 **A. Essentially what it comes down to is the**
 6 **subject's compliance versus non-compliance and the**
 7 **response to situations that may include stand-off**
 8 **situations, subjects that are off their medications,**
 9 **subjects that are having problems with spouses, that**
 10 **are more or less stress induced rather than just**
 11 **non-compliance of civil obedience.**
 12 Q. Well, do you understand one of the purposes for
 13 de-escalation training is to promote officer safety?
 14 **A. As well as the subject, yes.**
 15 Q. And do you understand one of the purposes for
 16 de-escalation training is to reduce both the level and
 17 the number of incidents, use of force incidents?
 18 **A. I know that there are times, as in the**
 19 **curriculum there are times when de-escalation training**
 20 **cannot take effect and are not applicable to that**
 21 **situation where an officer has to take action as**
 22 **opposed to creating time and distance. And**
 23 **specifically that was covered most recently, time and**
 24 **distance when an officer has an opportunity and isn't**
 25 **immediately compelled to take action.**

1 Q. I'm just asking in general if a goal of
 2 de-escalation training is to reduce the number of
 3 incidents of use of force?
 4 **A. I would have to know the moment and the use of**
 5 **force.**
 6 Q. In general.
 7 **A. Yes.**
 8 Q. And is a goal of de-escalation training to avoid
 9 placing officers in situations where they might
 10 misperceive the need to use force or the level of force
 11 necessary?
 12 **A. They trained you to recognize when you have time**
 13 **and distance and don't have to get necessarily involved**
 14 **to use force, if that's what you mean. But it's very**
 15 **case specific.**
 16 Q. Well, it teaches, does it not, de-escalation
 17 training, the utilization of tactics that would help
 18 avoid placing an officer in situations where force
 19 might be necessary?
 20 **A. But those tactics and that curriculum is based**
 21 **upon a situation or scenario where the officer has time**
 22 **and distance and isn't immediately compelled to act.**
 23 **So to answer your question, it again depends.**
 24 **The curriculum is based and built upon**
 25 **information and that includes the information that**

1 **you're saying, but it also has to do with very specific**
 2 **moments in time and very specific situations.**
 3 MR. RASKIN: Joe, why don't
 4 you let the reporter take a drink?
 5 MR. SCOTT: Off the
 6 record.
 7 (Thereupon, there was a recess.)
 8 (Thereupon, Plaintiffs' Exhibit 14 to
 9 the deposition of OFFICER WILLIAM JASON
 10 MILLER was marked for identification.)
 11 BY MR. SCOTT:
 12 Q. Officer, I want to hand you what I've marked as
 13 Plaintiffs' Exhibit 14. And I will tell you that this
 14 is a still frame photo taken from one of the videos.
 15 MR. PHILLIPS: It was 14?
 16 MR. SCOTT: 14, yes, sir.
 17 Q. And this photo appears to capture the moment.
 18 It looks like your left hand is on the driver's side
 19 door. Do you see that?
 20 **A. I can't say for sure that's what that is.**
 21 Q. Okay. That is you in sort of the middle of the
 22 photo looking at your back?
 23 **A. Yes.**
 24 Q. Okay. You appear to be drawing your weapon at
 25 this point.

1 **A. I can't say for sure. There's no time on this.**
 2 **You'd have to show this exact moment in the video and**
 3 **pause it so I could say yes or no, because there's so**
 4 **much information right here that's left out. I don't**
 5 **know.**
 6 **You're showing me a picture. I can't see even**
 7 **the time to say when this occurred, when this was**
 8 **frozen. All I know is that the door is open and --**
 9 Q. Well, let me ask you this --
 10 MR. RASKIN: Let me enter
 11 an objection to the alteration of the
 12 photo, because I suspect the photo did not
 13 include a characterization of either the
 14 driver's head or driver's left arm.
 15 MR. SCOTT: Okay. No.
 16 That's been added from the photo.
 17 BY MR. SCOTT:
 18 Q. Let me ask you this, Officer Miller: to the
 19 right of the photo, does that depict the cruiser that
 20 you were driving on March 7th of 2017?
 21 **A. Yes.**
 22 Q. And on the left side does that appear to be the
 23 back of Sergeant Kelley's vehicle?
 24 **A. Yes.**
 25 Q. And there's an individual positioned immediately

1 behind Sergeant Kelley's vehicle. Would that be
 2 Officer Plut?
 3 **A. I can't say for certain, but I would assume so.**
 4 Q. Is that individual in the position that you
 5 recall Officer Plut being in as you opened the door on
 6 the van?
 7 **A. I don't know where he was when I opened the**
 8 **door.**
 9 Q. Does that appear to be your position, what you
 10 recall, as you opened the door on the van?
 11 **A. Yes.**
 12 Q. Okay. And what we see in the driver's seat is
 13 what appears to be the left arm of the driver. Do you
 14 recall seeing Mr. Evans' left arm in that position as
 15 you opened the door?
 16 **A. I can't say for sure that that particular white**
 17 **mark on that is his left arm, but it was in that**
 18 **general area, yes.**
 19 Q. Okay. So the white mark at least comports with
 20 your recollection of where Mr. Evans' left arm would
 21 have been as you opened the door, correct?
 22 **A. Yes.**
 23 Q. And we see what appears to be a head turned in
 24 your direction. Do you see that?
 25 **A. I see what's marked as a head, yes.**

1 Q. Okay. Well, you told me before that Mr. Evans
2 looked right at you with a surprised look on his face
3 when you opened the door, correct?
4 **A. Yes, I did say that.**
5 Q. Okay. And so does that indication as to where
6 the driver's head as being Mr. Evans' head comport with
7 your recollection of how Mr. Evans looked at you when
8 you opened the door to the van?
9 **A. No. Quite actually the more I stare at it, that**
10 **might actually be Ms. Pauley's face because, as I**
11 **stated to BCI, she had turned and faced and was**
12 **animated, out of control, very upset facing us square**
13 **towards me as the back drop. And that's about the area**
14 **where she was trying to communicate through screaming**
15 **and crying what was going on. That's very possible**
16 **that's her face.**
17 Q. Okay. So what is designated as the driver's
18 head in Plaintiffs' Exhibit 14 does not comport with
19 what you recall as being the position of Mr. Evans'
20 head as you opened the door to the driver's side door
21 of the van?
22 **A. No.**
23 Q. Okay. So you remember his head being in a
24 different position?
25 **A. He was his -- for that to actually take place**

1 **without knowing measurements, without knowing where**
2 **this was in the video, he -- when I pulled the trigger**
3 **the first time his back was up against the seat for the**
4 **most part.**
5 **For his head to be here in this picture to me,**
6 **he would have to be leaning forward with his back away**
7 **from the seat and away from me. And I know when I**
8 **engaged him, my round was in a general direction away**
9 **from the passenger. And what you're asking me to agree**
10 **here is that he would have been directly in front of**
11 **her and that's just not what happened.**
12 Q. Okay. So you recall Mr. Evans' back being in
13 contact with the driver's seat; is that correct?
14 **A. His lower back and right. He was like -- I'm**
15 **trying to put it in words for her.**
16 MR. RASKIN: You have to
17 put it in words because she can't
18 interpret what you mean if you move your
19 body or answer non-verbally.
20 **A. So essentially his right side would have been**
21 **still in partial contact with the seat leaning a little**
22 **bit towards Ms. Pauley with his face turned looking at**
23 **me (indicating).**
24 Q. Okay. But his back was against the seat?
25 **A. Not 100 percent.**

1 Q. Okay.
2 **A. But it was -- his right side of his back through**
3 **part of his lower shoulder was still up against the**
4 **seat.**
5 Q. Okay.
6 MR. RASKIN: Excuse me.
7 Let the record reflect that the witness is
8 also attempting to demonstrate physically
9 with his right hand below the conference
10 table level.
11 BY MR. SCOTT:
12 Q. Well, let me ask you, Officer, you indicated
13 that Mr. Evans was not blocking your view of Ms.
14 Pauley, correct?
15 **A. That's correct.**
16 Q. So Mr. Evans was not bent over in any way?
17 **A. Well, define bent over.**
18 Q. Well, --
19 **A. He wasn't bent forward. He was bent -- he was**
20 **essentially bent slightly to his right in the seated**
21 **position, if facing the steering wheel was forward or**
22 **to his front. To his right was Ms. Pauley and he was**
23 **leaning slightly to his right.**
24 **So define bent over.**
25 Q. Okay, I think you also indicated to me that

1 when you opened the door initially you could see both
2 of Mr. Evans' hands?
3 **A. That's correct.**
4 Q. Left hand was on the steering wheel; right hand
5 on the gear shift?
6 **A. That's correct.**
7 Q. And you indicated that because you could see
8 both of Mr. Evans' hands your initial thought was to, I
9 think the phrase you used was go hands on and just
10 physically remove Mr. Evans from the van; is that fair?
11 **A. Yes.**
12 Q. But as you were opening the door to the van, you
13 were reaching for your weapon; is that right?
14 **A. No.**
15 Q. Okay. What's wrong about that?
16 **A. Initially when I got out of the vehicle, out of**
17 **my vehicle I went for my gun and realized I didn't need**
18 **it at that moment because I did not have a clear path**
19 **of engagement to Mr. Evans from that moment. The door**
20 **was closed. There's glass in the way. There's a**
21 **passenger behind him. He had just assaulted Sergeant**
22 **Kelley for the second time. I could not incapacitate**
23 **him with my weapon at that moment in time.**
24 Q. Okay. So had you begun to draw your weapon and
25 then stopped, or were you reholstering your weapon?

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- 1 **A. When I exited my vehicle I went for my gun**
 2 **because he was clearly trying to assault Kelley for the**
 3 **third time by backing up and ramming him again. And**
 4 **decided I just could not engage him at that moment with**
 5 **my gun.**
 6 Q. Okay. So did you -- I'm trying to understand
 7 what you're telling me relative to your actions towards
 8 your gun. Did you reholster your gun or --
 9 **A. Yes. I never took it out. I never even**
 10 **unlocked the safety.**
 11 Q. Okay. You took your hand off of your gun?
 12 **A. Yes.**
 13 Q. Okay. Do you know if your hand was on your gun
 14 when you opened the door to the van?
 15 **A. It was not.**
 16 Q. Okay. Do you know if you were holding your gun
 17 as you opened the door to the van?
 18 **A. I was not holding it.**
 19 Q. Okay. Were you on any sort of administrative
 20 leave or anything to that effect following this event?
 21 **A. Yes.**
 22 Q. Okay. For how long were you on administrative
 23 leave?
 24 **A. About a month.**
 25 Q. Okay. And is that a standard protocol for an

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- 1 your involvement in this incident?
 2 **A. Counseling, could you explain what you mean by**
 3 **counseling and what it refers to, in terms of my**
 4 **actions here, or just general welfare?**
 5 Q. Well, let me ask you both ways. First of all,
 6 any counseling as regards to your performance as a
 7 police officer?
 8 **A. For that moment in time?**
 9 Q. Yes, sir.
 10 **A. Yes.**
 11 Q. Okay. What did you receive?
 12 **A. I initially had not turned on my mic pack until**
 13 **later in the pursuit. As part of walking through the**
 14 **basics through everything that we're trained to do**
 15 **through pursuit driving school, it occurred to me that**
 16 **I had not turned on my mic pack because I was on**
 17 **station. And when you're on station you immediately**
 18 **lose signal from the cruiser to your mic pack and it**
 19 **vibrates every three seconds or so and it becomes very**
 20 **annoying. So it's normal to turn that mic pack off**
 21 **while you're typing or doing something in station.**
 22 **Nine times out of ten when you leave station you**
 23 **remember. But when something like this comes up**
 24 **suddenly and you react suddenly, minor details**
 25 **sometimes get overlooked, like turning on your mic**

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- 1 officer involved in the use of deadly force incident to
 2 be on administrative leave for that period of time?
 3 **A. I can't say to what our standard protocol is**
 4 **because it just hasn't happened. It hasn't -- I know**
 5 **what our policy says, and it references three days**
 6 **minimum; however, it's really up to the discretion of**
 7 **the Chief and how the investigation is going. So I**
 8 **can't answer to what is protocol.**
 9 Q. Had it been your desire to return to active duty
 10 sooner than a month?
 11 **A. Yes and no.**
 12 Q. Okay. Can you please explain that?
 13 **A. After something like this you have to understand**
 14 **that sitting at home, not knowing what's going on, not**
 15 **knowing what information is being developed, what is**
 16 **happening is very hard to do. 17 years of going to**
 17 **work every single day or every couple days and not**
 18 **being a part of that team and not knowing what happened**
 19 **or what's going to happen or how it's evolving.**
 20 **So some time after a couple of weeks I started**
 21 **making calls to find out what it would take to get me**
 22 **back to at least doing something at the police**
 23 **department.**
 24 Q. Okay. And was there any sort of retraining or
 25 counseling any of kind that was given to you because of

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- 1 **pack. So I was counseled to try to remember to turn on**
 2 **my mic pack sooner.**
 3 Q. So of all the actions that you took during your
 4 participation in this pursuit through its resolution
 5 the one thing that the City of Strongsville was
 6 critical of was your failure to turn on your mic pack?
 7 **A. That's correct.**
 8 Q. Had you received any other counseling relative
 9 to your performance of duties as a police officer?
 10 **A. No.**
 11 Q. Did you receive some other form of counseling?
 12 **A. Yes.**
 13 Q. Just for your well-being?
 14 **A. Yes.**
 15 Q. Okay. And there was nothing about that that
 16 prevented you from returning to active duty, right?
 17 MR. RASKIN: Objection.
 18 I need to -- we need to take a break.
 19 MR. SCOTT: Okay.
 20 (Thereupon, there was a recess.)
 21 MR. RASKIN: So Mr. Scott
 22 has begun to inquire of Officer Miller
 23 with regard to counseling that he may have
 24 had subsequent to the events which are the
 25 subject matter of the Plaintiffs'

1 complaint. I have advised my client that
 2 he has HIPAA privacy rights.
 3 MR. SCOTT: Yes.
 4 MR. RASKIN: And he does
 5 not have to disclose any communications
 6 that he may have had with respect to any
 7 counseling that occurred.
 8 MR. SCOTT: Okay.
 9 BY MR. SCOTT:
 10 Q. I think my question was simply, was there
 11 anything about that that prevented you from returning
 12 to active duty?
 13 **A. And I understand that. I just didn't know where**
 14 **you were going from there.**
 15 Q. I don't think I'm going anywhere after that.
 16 MR. RASKIN: If I had known
 17 that, then we wouldn't have taken a break.
 18 I apologize. But I didn't know that, so I
 19 just wanted to make sure he understood
 20 that he had HIPAA policy rights.
 21 MR. SCOTT: Okay.
 22 Absolutely.
 23 **A. So to answer your question, nothing came up that**
 24 **prevented me from coming back to work.**
 25 Q. Okay. And let me ask you, Officer Miller,

1 following the incident with Lawrence McKissic that we
 2 talked about earlier were you under administrative
 3 leave while that incident was being investigated?
 4 **A. Yes.**
 5 Q. Was it for a similar period of time, or longer
 6 or shorter?
 7 **A. It was shorter.**
 8 Q. Okay. Do you remember how long?
 9 **A. I don't recall. Maybe two weeks. I don't**
 10 **recall. It was a different chief at the time.**
 11 Q. I think you said that was Chief Goss.
 12 **A. Goss, G-O-S-S.**
 13 Q. And, again, as regards to your performance as a
 14 police officer, did you receive any counseling or
 15 retraining as regards to your performance as a police
 16 officer relative to the indent involving Lawrence
 17 McKissic?
 18 **A. No.**
 19 MR. SCOTT: Officer
 20 Miller, I believe those are all the
 21 questions I have for you here today. I
 22 thank you for giving us the opportunity to
 23 speak with you.
 24 ---
 25 ///

1 BY MR. SIDOTI:
 2 Q. Officer Miller, my name is Marcus Sidoti. And
 3 Mr. Scott has already outlined the caption of the
 4 litigation.
 5 And as you may or may not be aware, in regards
 6 to Plaintiffs, I personally represent Adam Fried as the
 7 Administrator of the Estate of Roy Evans, Jr.
 8 I'm going to do my best here not to be
 9 redundant. Mr. Scott covered a lot of similar areas so
 10 I'm going to do my best, which may result in me jumping
 11 around a little bit if you don't mind.
 12 The same rules apply. If you have any questions
 13 or don't understand my question, just ask me to
 14 rephrase or ask for time. But the same caveat in
 15 regards to if I have a pending question, if you'd like
 16 to speak with counsel, that's fine. Just please answer
 17 that question before you take that break. Is that
 18 okay?
 19 **A. Yes.**
 20 Q. Okay. Mr. Scott asked you a number of questions
 21 regarding some policies, primarily that of the pursuit
 22 policy in conjunction with the traffic stop policy. Do
 23 you recall that?
 24 **A. Yes.**
 25 Q. And those are two separate policies. One, a

1 policy adopted by the City of Strongsville for police
 2 officers in effectuating traffic stops, and the other
 3 when officers are in pursuit of an individual; is that
 4 a fair statement?
 5 **A. Yes.**
 6 Q. Okay. In regards to any motor vehicle stops,
 7 and I believe Mr. Scott may have covered this, are
 8 there any other policies that you understand aside from
 9 the traffic stop and the pursuit policy that would be
 10 pertinent here?
 11 MR. RASKIN: Objection,
 12 asked and answered.
 13 You can answer it again.
 14 **A. No.**
 15 Q. Okay. Mr. Scott asked you some questions and
 16 you indicated that, you know, it goes from a traffic
 17 stop in regards to, you know, would the vehicle have
 18 stopped and some of the policies should only be
 19 implemented or utilized by the officers once that
 20 vehicle stops. Do you recall that line of questioning?
 21 **A. Yes.**
 22 Q. Okay. So is it your understanding that the
 23 traffic stop policy only comes in to play and is the
 24 policy adopted by the City of Strongsville only if you
 25 have a vehicle that's stopped on the roadway; is that

1 your thought?

2 **A. Define stopped.**

3 Q. Ceased of any further movement.

4 **A. Like a crash?**

5 Q. Period. A stop. Something's immobile. It's

6 not moving any longer.

7 **A. Yes, that would then revert back to the motorist**

8 **stops.**

9 Q. So the cessation of movement, does that change

10 if I asked you to identify it by that phrase?

11 **A. Well, I want to understand your definition of**

12 **stop and whether it was compliant and they pulled over**

13 **and just stopped, or it was stopped by means of**

14 **anything unrelated to our involvement like an accident**

15 **or the car rolls over and is no longer in motion.**

16 Q. Let me come back to that for a moment. You

17 understand that there are certain specific protocols

18 once a motor vehicle, an attempted traffic stop

19 escalates in to a pursuit, correct?

20 **A. Yes.**

21 Q. There's specific policies that are addressed

22 once someone is not stopping for something as minor as

23 a stop sign violation, fair statement?

24 **A. Yes.**

25 Q. Okay. Is it your testimony that then if that

1 car stops from what was the pursuit, that your policy

2 would then revert back to an officer's obligations

3 underneath the traffic stop policy?

4 **A. It would really depend on that moment in time.**

5 **And if you give me a specific scenario, I could help**

6 **you out and be more specific in my answer.**

7 Q. But it's a possibility based on your

8 understanding that it could revert back and forth?

9 **A. Yes.**

10 Q. Okay. Mr. Scott addressed a bit about the

11 McKissic matter. Do you recall that case?

12 **A. Yes.**

13 Q. Okay. We've already addressed the fact that I

14 believe you were employed as a Strongsville officer,

15 but at that time you were representing the regional

16 task force or whoever was involved with that drug

17 transaction Mr. McKissic was involved in; is that

18 correct?

19 **A. Yes.**

20 Q. So just to clarify, what were you outfitted in

21 at the time of that incident, if you recall?

22 **A. Define what you mean. My clothing?**

23 Q. Yeah.

24 **A. I was wearing jeans and a T-shirt, a vest, a**

25 **bulletproof vest, a badge. I had a light-weight winter**

1 **jacket on.**

2 Q. Okay. So fair enough that you weren't outfitted

3 in any Strongsville Police garb that you would have as

4 a patrolman here?

5 **A. That's correct.**

6 Q. What was your -- strike that.

7 Were you operating as part of the vice force at

8 that point?

9 You're undercover. Are you a vice officer at

10 that point?

11 **A. I was a task force officer assigned to the FBI.**

12 Q. Okay. How much involvement with that particular

13 case did you have prior to the incident that occurred

14 that led to the litigation with Mr. McKissic; was it a

15 -- and I'm just clarifying, were you involved in the

16 investigation for weeks; was it a scheduled buy bust

17 just that day, if you can recall?

18 MR. RASKIN: You can

19 answer.

20 **A. There was a lot of planning that went into that.**

21 **I don't recall if specifically that was several weeks**

22 **long. I know that we had done one prior buy on that**

23 **subject. So to answer your question it wasn't planned**

24 **and executed on the same day of the shooting.**

25 Q. When you say we, were you personally involved

1 with the prior buy with Mr. McKissic and whoever was

2 the confidential informant?

3 **A. Yes.**

4 Q. Okay. Was that in the City of Strongsville?

5 **A. No.**

6 Q. Was that another buy in which you were working

7 under your capacity as one of the task officers?

8 **A. Yes.**

9 Q. And in that particular case, that was a

10 scheduled drug transaction between a confidential

11 informant and Mr. McKissic; is that correct?

12 **A. No.**

13 Q. Can you tell me what that --

14 **A. It was Mr. McKissic was the driver of that**

15 **transaction. At the time we had no idea until after**

16 **the shooting who the target was because we only knew**

17 **them by a street name. So it was either the passenger**

18 **or the driver at the time.**

19 Q. The prior buy that you were involved in, was

20 Mr. McKissic involved in that transaction as well?

21 **A. I don't know the answer to that.**

22 Q. Okay. That particular case, the incident with

23 Mr. McKissic and the litigation back in 2011, 2012,

24 that happened at a Walmart; is that correct?

25 **A. Yes.**

- 1 Q. The portion of the stop that led to the shooting
2 involving Mr. McKissic, to clarify.
3 **A. Yes.**
4 Q. Okay. Do you recall how many officers were on
5 scene at that time?
6 **A. No, I don't.**
7 Q. Do you recall in regards to your investigation
8 how many officers were involved in the prior buy?
9 **A. No.**
10 Q. Do you recall if it's more than five?
11 **A. When you say officers that were involved, I need**
12 **to know specifically if you're referring to the initial**
13 **task force responding officers who were part of the**
14 **buy, because there was a lot more to this that included**
15 **some of the Strongsville Police Department uniformed**
16 **division during that buy and arrest.**
17 Q. To the best of your knowledge when you fired the
18 first of nine shots against Mr. McKissic, how many
19 officers do you understand were on scene, if you
20 recall?
21 **A. Five.**
22 Q. Okay. How many of them do you believe or recall
23 were Strongsville Police Officers?
24 **A. Myself and one other. So two on scene.**
25 Q. Who was the other, if you recall?

- 1 **A. Detective Zurzin.**
2 Q. Walk me through what you recall in
3 Mr. McKissic's case how the drug transaction occurred
4 until the shooting.
5 **A. Those are details that I haven't thought about**
6 **or read about in quite a long time. Without -- I can**
7 **generalize and give you a very general idea of what was**
8 **going on and what happened.**
9 Q. Please do.
10 **A. But to say that I'm going to be fact and stat**
11 **specific, I can't say that I would be very accurate.**
12 Q. Give me the generalized understanding of what
13 you recall.
14 **A. That particular day we were supposed to do a buy**
15 **bust in Strongsville. The source was being controlled**
16 **by me. And we were expecting to buy a sum of crack.**
17 **And the target agreed or sometimes met our snitch in**
18 **the Walmart parking lot or in the Strongsville area.**
19 **So it was comfortable to put him in that location again**
20 **for another buy.**
21 The initial plan was for the Strongsville
22 uniformed division to make the arrest via a traffic
23 stop out on Pearl Road near 71 after the buy went down
24 and after the two left the area. However, that was
25 immediately changed right immediately following the buy

- 1 **by our lieutenant who was in charge of the task force**
2 **at the time representing Cleveland, Lieutenant**
3 **Connolley.**
4 He was driving an F 250 pickup truck and had a
5 relatively high field of view. As he drove past the
6 car that the two were in, he observed them holding a
7 large sum of narcotics and money and not paying
8 attention to their surroundings.
9 So he made the call at that moment and changed
10 it up to take them down right there in that parking
11 lot, which was not planned and we were not prepared
12 for. And that's how it evolved into that moment where
13 he was shot.
14 Q. Mr. McKissic was operating that vehicle. Do you
15 recall who else was inside of the car at the time shots
16 were fired?
17 **A. I don't remember his name.**
18 Q. Do you recall identifying prior to firing your
19 weapon that there were other occupants in the vehicle?
20 **A. There were no other occupants.**
21 Q. At the time when you shot, Mr. McKissic was the
22 only occupant?
23 **A. Yes, because the passenger had been removed**
24 **already by Lieutenant Connolley.**
25 Q. And in this case when you shot, you weren't in a

- 1 vehicle; you were only on foot at that time, correct?
2 **A. Yes.**
3 Q. Okay. And once the passenger was removed,
4 Mr. McKissic I'm assuming, was he trying to leave the
5 parking lot?
6 **A. After he had been shot?**
7 Q. Prior to.
8 **A. Yes, he was trying to leave.**
9 **Prior to the take down?**
10 **Explain at what --**
11 Q. Walk me through what you recall. You indicated
12 that officers removed the passenger. I'm assuming that
13 he would have got, for lack of better terms, a heads up
14 that something was going on possibly involving law
15 enforcement. How was it that the passenger was
16 extracted prior to the gentleman trying to leave the
17 parking lot?
18 **A. At the moment the lieutenant changed it up, we**
19 **were -- as he was making -- as he was making the turn,**
20 **the vehicle was still in transit through the parking**
21 **lot aisles. I assumed he was leaving or intended to**
22 **leave immediately following the sale, but we didn't**
23 **know that for sure.**
24 He was driving down one of the aisles. And when
25 he reached the end is when Lieutenant Connolley pulled

1 in front of him to go the opposite direction as if we
2 were just another car looking for the spot. And that's
3 when he made the observation that now would be a good
4 time to take them down as opposed to using the road
5 units.

6 And at that moment, because he observed that
7 their focus was in their laps and that he observed a
8 large amount of what he believed to be cash and
9 narcotics at the time that they were trying to divvy
10 up, and thought that that would be a good time to try
11 and extract them.

12 At that moment we started a dynamic vehicle
13 extraction where my vehicle was going to be the
14 blocking vehicle to the front. His vehicle went to the
15 rear. And the parked cars essentially on the passenger
16 side of that vehicle would essentially block on the
17 right.

18 Q. At that point or at some point you pulled your
19 vehicle in front of Mr. McKissic's vehicle?

20 A. Not by purpose of the takedown, but as the way
21 it was unfolding, that's where my vehicle ended up as
22 part of the sudden changeup. I was already there. So
23 it wasn't -- it was both -- I stopped there in front of
24 him, but I also exited the vehicle because now where I
25 was put me in a position to block the vehicle.

1 Q. Did you exit your vehicle?

2 A. Yes.

3 Q. Okay. And as you indicated, your vehicle would
4 have been blocking him, not by plan, but as the change
5 in plan your vehicle was conveniently there for the
6 path of which Mr. McKissic would have been leaving the
7 parking lot?

8 A. No, it actually was both. But the plan of that
9 type of takedown includes a blocking vehicle to the
10 front and a blocking vehicle to the rear, and one or
11 more persons are holding them at gunpoint while another
12 officer goes and does the extraction, which is what
13 Lieutenant Connolley did. He went to the passenger
14 side and extracted the passenger while I held the
15 driver, expecting Detective Zurzin to come around the
16 other side and grab the driver and then we'd be
17 complete.

18 Q. And when you said you held the driver, what
19 position did you take?

20 Well, the vehicle was already there and you're
21 out of the vehicle at this point, correct?

22 A. Yes.

23 Q. Okay. And where did you stand in relation to
24 Mr. McKissic's vehicle?

25 A. When I got out of my vehicle standing at

1 my doorway I was already immediately in front of
2 Mr. McKissic's vehicle.

3 Q. Was he his vehicle stopped at that time?

4 A. Yes.

5 Q. So would you have had the opportunity to move
6 out from directly in front of Mr. McKissic's vehicle?

7 A. Could I just walk away?

8 Q. Could you just walk somewhere except for
9 directly in front of a stopped vehicle at that
10 juncture?

11 A. Yes, I could.

12 Q. Okay. Did you remain directly in front of the
13 vehicle while the passenger was extracted?

14 A. Yes.

15 Q. At that point did you have your gun drawn, if
16 you recall?

17 A. I don't recall.

18 Q. At some point immediately before, during and
19 after the extraction of the passenger did you draw your
20 gun at some point?

21 A. Yes.

22 Q. Okay. And still remaining directly in front of
23 Mr. McKissic's vehicle?

24 A. Yes.

25 Q. And Mr. McKissic remained in the vehicle and at

1 some point you discharge I believe nine rounds of your
2 firearm; is that correct?

3 A. Yes.

4 Q. Okay. Were you harmed in regards to your
5 involvement in that case?

6 MR. RASKIN: Objection.

7 BY MR. SIDOTI:

8 Q. Were you harmed?

9 Would you like me to rephrase?

10 MR. RASKIN: I would,
11 because I don't know what that term means.

12 Q. Did you sustain any physical injuries as a
13 result of your reaction with Mr. McKissic at that time,
14 Officer?

15 A. Physical, no.

16 Q. Okay. And did you remain on scene to do an
17 inventory of Mr. McKissic's vehicle after he was shot?

18 A. No.

19 Q. As you sit here today are you aware that
20 Mr. McKissic was not in possession of any firearms in
21 that vehicle?

22 A. Yes.

23 Q. So another officer or sergeant had already
24 extracted the passenger. Is there any other officers
25 near the driver's side door around the time when you

1 discharged your firearm?
 2 **A. No.**
 3 Q. To the best of your recollection did any other
 4 officers discharge their firearm in that incident?
 5 **A. No.**
 6 Q. Well, I'm going to move on to the incident
 7 involving Mr. Evans. I have several things of the
 8 video queued up that we'll go over later. I was going
 9 to bring the projector, but I figured it would be
 10 easier if we look at it on a laptop. I don't know what
 11 I have here, so we'll do that near the end, but a
 12 couple questions first regarding the pursuit.
 13 Mr. Scott asked you several questions regarding
 14 some contact between vehicles, yourself, Sergeant
 15 Kelley and the van being driven by Mr. Evans. Do you
 16 recall that?
 17 **A. Yes.**
 18 Q. Okay. The first contact, if you recall, that
 19 happened between yourself and Mr. Evans, was that prior
 20 to or after the deployed strips had already made
 21 contact with the van?
 22 **A. Prior to.**
 23 Q. Okay. At the time of the first contact, and if
 24 you want to reference the video, we can. We'll go
 25 there. But do you recall the first contact in what

1 I'll refer to as the one lane or the slow lane in a
 2 multi-lane highway. Do you recall that?
 3 **A. Actually, the one lane is the inside lane. It**
 4 **goes one, two, three to the right.**
 5 Q. Do you recall at the time of the first contact
 6 between yourself and Mr. Evans that he would have been
 7 operating the van in the slow lane, otherwise referred
 8 to as the three lane.
 9 **A. That's not true.**
 10 Q. What lane of travel do you believe that he was
 11 in the first time that his car and your car made
 12 contact with one another, if you recall?
 13 **A. Between the first and second lane.**
 14 Q. Okay. At some point prior to the deployment of
 15 the stop sticks by the Ohio State Highway Patrol do you
 16 operate your vehicle in the berm or what would be
 17 outside of the lane of the three lane?
 18 **A. Yes.**
 19 Q. Okay. You know, Officer, before I forget, will
 20 you do me a favor?
 21 You're wearing a duty belt as you're outfitted
 22 currently, correct?
 23 **A. Yes.**
 24 Q. Would you stand up for a moment?
 25 **A. (Indicating).**

1 Q. I notice your gun's holstered on your right
 2 side. Are you right handed?
 3 **A. Yes.**
 4 Q. Okay. Is that holster similar or perhaps the
 5 same holster you would have had on your duty belt on
 6 the date of the incident which is the litigation in
 7 this case?
 8 **A. It's not the same, but it's similar.**
 9 MR. RASKIN: You can sit
 10 down.
 11 BY MR. SIDOTI:
 12 Q. Could you turn? Okay. You can sit down.
 13 Thanks.
 14 You've been an officer for a number of years.
 15 You're familiar with the fact there's many different
 16 holsters officers carry their issued firearm on or in I
 17 should say, correct?
 18 **A. Yes.**
 19 Q. Okay. So the particular holster you have on
 20 now, it looks like as if it has a single strap that
 21 goes over what would be the hammer of the weapon that
 22 you're carrying; is that a fair statement?
 23 **A. If you're asking me if that's one level of**
 24 **safety, yes. There's one level of safety there. It's**
 25 **not a strap.**

1 Q. So the one level of safety, it looks to be maybe
 2 a three-quarter inch strap of material that goes from
 3 the interior portion of the holster over the rear of
 4 the gun and looks as if it buttons. Can you tell me
 5 the apparatus on how that locks there?
 6 **A. With the exception of the button, that's**
 7 **relatively right.**
 8 Q. Okay. So would it pop off similar to, you know,
 9 a button, is it a clip; how would --
 10 **A. It is a hinge.**
 11 Q. It's a hinge. Okay. (Indicating). Got you.
 12 So let's talk about the holster that you had on
 13 the night of the incident. Do you recall that
 14 particular holster?
 15 **A. I believe it's the same.**
 16 Q. Okay. You believe it's identical?
 17 **A. It's identical in construction, but not the same**
 18 **holster that I have on today.**
 19 Q. Would it be identical in regards to levels of
 20 safety --
 21 **A. Yes.**
 22 Q. -- for removing the firearm from your belt?
 23 **A. Yes.**
 24 Q. Okay.
 25 MR. RASKIN: Let him get

1 his question out before you answer it,
2 even though you think you know what it's
3 going to be. Okay?

4 BY MR. SIDOTI:

5 Q. So, for the record, what does it require of you
6 to make the firearm capable of being removed from the
7 holster by the first level of safety?

8 **A. I cannot remove it like this (indicating).**
9 **There's another level of safety.**

10 MR. RASKIN: All right. So
11 that translates to nothing on the
12 transcript. So you have to describe what
13 you just did in order to answer his
14 question.

15 **A. I cannot remove the weapon with defeating the**
16 **first level of safety.**

17 Q. Okay. So in order to remove your weapon, it's
18 fair to state that you do several things with the
19 holster for safety reasons and the like, right?

20 **A. Correct. Yes.**

21 Q. So it indicates as if you're using your thumb to
22 depress the interior side of the holster to have that,
23 as if it were a bridge, to come forward to the front of
24 your body to then access the butt of the gun; is that a
25 fair statement?

1 Q. Okay. Is there a policy that you're familiar
2 with at the time of the incident -- well, strike that.

3 Mr. Scott asked you questions at the time
4 when you were approaching the vehicle being driven by
5 Mr. Evans that your intent was to just pull him out of
6 the vehicle physically, correct?

7 **A. Yes.**

8 Q. Okay. And that was your intent including up
9 until the time that you grabbed the door just prior to
10 opening; is that a fair statement?

11 **A. I still intended when I opened the door to grab**
12 **him.**

13 Q. Okay. And grab him only, that was going to be
14 your means of removing him from the vehicle. You were
15 only going to grab him and remove him out physically,
16 correct?

17 **A. Yes.**

18 Q. Okay. Do you recall that prior to approaching
19 the vehicle and touching the door that you had
20 addressed your firearm to make it more accessible in
21 any way?

22 **A. Not specifically, no.**

23 Q. Okay. Since you indicated that your plan was to
24 only physically remove Mr. Evans, there wouldn't be any
25 reason when you removed yourself from your vehicle

1 **A. Yes.**

2 Q. That would be the first level of safety for that
3 holster, correct?

4 **A. Yes.**

5 Q. Okay. I'm a bit familiar. Is the second level
6 of safety, does it have some sort of safety mechanism
7 which the gun has to be pushed down and pulled forward?

8 **A. No.**

9 Q. Could you walk me through what would be after
10 the first level of safety to remove that firearm?

11 **A. After the first level of safety there's a block**
12 **that keeps the weapon from falling out. That is**
13 **defeated, the second level of safety is defeated by the**
14 **interior button that's hidden beneath the hood of the**
15 **level one safety.**

16 Q. Okay. And then assuming if you now hit that
17 button that looks like you're depressing with your
18 thumb on the interior again pushing that button
19 backward, would that allow you to remove the firearm?

20 **A. Yes.**

21 Q. Okay. And it's your testimony that was perhaps
22 not the identical, but the same holster in regards to
23 the mechanism and levels of safety from the night of
24 the incident; is that fair?

25 **A. Yes.**

1 prior to approaching his that you would have addressed
2 any of the safety levels with the firearm to make it
3 more accessible when you approached the van; is that a
4 fair statement?

5 **A. When I got out of the vehicle I didn't have any**
6 **interaction with my weapon during the pursuit or when I**
7 **got out of the vehicle until that moment when I stood**
8 **up.**

9 Q. And refresh me, when you say stood up, what do
10 you mean, when you got out of the vehicle?

11 **A. Yes.**

12 Q. Okay. So when you got up did you address your
13 weapon in any way?

14 **A. Yes.**

15 Q. Okay. How?

16 **A. I reached down for it and then disengaged.**

17 Q. Okay. Why would you reach down for it?

18 **A. I reached down for it because he had just rammed**
19 **Sergeant Kelley the second time and was obviously**
20 **preparing to do it again. And at that moment the**
21 **totality of the circumstances indicated that I would**
22 **try to engage him, but with Ms. Pauley immediately**
23 **behind him and the vehicle being a closed door and**
24 **having the experience of glass taking effect and door**
25 **panels taking effect, it would be a terrible idea.**

1 Q. And I want to address this, what you keep
 2 referring to as ramming of Sergeant Kelley's vehicle.
 3 In your guesstimation, or if you know or if you don't
 4 know, how fast would you believe Mr. Evans' vehicle was
 5 going prior to the last time he made contact with
 6 Sergeant Kelley's vehicle before you fired your weapon?
 7 **A. I don't know.**
 8 Q. Have you ever testified in a traffic violation
 9 matter in any municipal court or any mayor's court?
 10 **A. Yes.**
 11 Q. Okay. Have you ever issued a ticket to anyone
 12 -- well, strike that.
 13 Have you ever testified as to what you believe
 14 the speed of a vehicle to be, even without a radar or
 15 any other device to indicate how fast that vehicle is
 16 traveling?
 17 **A. I don't recall ever testifying to a**
 18 **speed-related issue.**
 19 Q. Okay. Mr. Scott went through the BCI report you
 20 read that was issued as a result of a sit-down audio
 21 taped interview that you had with Mr. Moran; is that
 22 correct?
 23 **A. Yes.**
 24 Q. Okay. And you indicated both in the report and,
 25 if you recall, at the time of the interview that the

1 lights from multiple cruisers were able to illuminate
 2 things so you can see Mr. Evans as you refer to very
 3 clearly. Do you recall that?
 4 **A. Yes.**
 5 Q. Okay. And you also indicated that even at the
 6 time when you opened the door that you could see both
 7 of his hands on the steering wheel and/or the right
 8 hand being on the gear shift, correct?
 9 **A. Yes.**
 10 Q. Okay. And that's a visual that you're
 11 indicating that you saw his hands at those positions,
 12 and you referred to them in your testimony as being on
 13 the vehicle -- on the steering wheel and the shifter
 14 after you opened the door, correct?
 15 **A. I would say as I opened the door. I don't know**
 16 **to what point the door was fully opened versus the**
 17 **motion.**
 18 Q. And in the video, if you recall, there's another
 19 officer that's almost directly next to you. Do you
 20 recall who that was?
 21 **A. I didn't at the time, but I know who it is now.**
 22 Q. And who is it?
 23 **A. Officer Plut.**
 24 Q. Okay. Mr. Scott asked you some questions
 25 regarding a, quote, unquote, felony call out. Are you

1 familiar with those call outs?
 2 **A. Yes.**
 3 Q. Okay. What is a felony call out?
 4 **A. If you're talking about a felony stop is what I**
 5 **assume you're talking about.**
 6 Q. Okay.
 7 MR. RASKIN: Wait a minute.
 8 Is that what you're asking?
 9 MR. SIDOTI: I'm going to
 10 clarify.
 11 MR. RASKIN: Thank you.
 12 BY MR. SIDOTI:
 13 Q. Did you have the opportunity to review or listen
 14 to any of the dispatch audio from the date of the
 15 incident?
 16 **A. As a matter of watching the video, yes.**
 17 Q. Okay. So you recall even in the beginning of
 18 the pursuit all the way until the end of it there's
 19 numerous calls back and forth on radio regarding the
 20 strips and the pursuit and where officers are involved
 21 and the like, correct?
 22 **A. Yes.**
 23 Q. Communications are being made by the officers
 24 through dispatch or the radios that are on the audio
 25 portion of the files, correct?

1 **A. Yes.**
 2 Q. Okay. So at some point there's a conversation,
 3 I believe between you and Sergeant Kelley, and correct
 4 me if I'm wrong, that you're going to execute a felony
 5 call out. Do you recall that?
 6 **A. Yes.**
 7 Q. And I'm not going to talk about it verbatim.
 8 It's on a tape. We've all heard it. And Sergeant
 9 Kelley -- I believe it's you. If you recall do you
 10 make the request, hey, if they stop are we just calling
 11 them out.
 12 **A. Yes.**
 13 Q. And Sergeant Kelley who's your immediate
 14 supervisor, correct?
 15 **A. Yes.**
 16 Q. And he's in charge of this pursuit, correct?
 17 **A. Yes.**
 18 Q. He acquiesces that order?
 19 **A. I don't think he was reluctant. He certainly**
 20 **wasn't protesting it. That's what that means, right?**
 21 Q. Right.
 22 **A. He wasn't reluctant. It was a conversation**
 23 **between the two of us.**
 24 Q. And he agreed, you indicated something along the
 25 lines of, hey, we're just going to call them out.

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1 That's right, we're just calling them out?
 2 **A. Well, that was two officers talking through per**
 3 **policy trying to look forward through the pursuit if**
 4 **they do stop, what we will do. There were many things**
 5 **that were talked about.**
 6 Q. After that specific discussion -- well, let me
 7 ask you this -- strike that.
 8 Sergeant Kelley tells you to do something. Did
 9 he have to tell you that that's an order?
 10 **A. Well, it depends. If two guys are talking in a**
 11 **room and he just happens to be the sergeant and I just**
 12 **happen to be the patrolman, it's not necessarily**
 13 **conferred or inferred by me as an order.**
 14 **The conversation that you're talking about was**
 15 **brought up by me and the two guys were having a**
 16 **conversation for the benefit of the new guy, relatively**
 17 **new guy who has zero experience in these types of**
 18 **things. And that's what that was about.**
 19 Q. Okay. But there's specifically a conversation
 20 between yourself, Sergeant Kelley your supervisor
 21 indicating that you're going to call the individuals
 22 out of the van, correct?
 23 **A. If it comes to a stop, yes.**
 24 Q. That's not said on the dispatch or any of the
 25 recordings, is it?

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1 **A. It's obviously implied and understood by all**
 2 **those involved.**
 3 Q. Obviously implied and understood?
 4 **A. Yes.**
 5 Q. Never verbalized, but obviously said and
 6 understood?
 7 **A. Yes.**
 8 Q. Okay. Your testimony a moment ago was that you
 9 were having this discussion for I believe you indicated
 10 the new guy.
 11 **A. Yes.**
 12 Q. Who's that?
 13 **A. Plut.**
 14 Q. How long had Plut been on the force to your
 15 recollection at that time?
 16 **A. Not very long.**
 17 Q. How would Plut know what's going to be inferred
 18 for something that's never verbalized?
 19 **A. As an order, it wasn't inferred as an order. It**
 20 **was a tactic so he was aware of possible outcomes**
 21 **should this vehicle come to a compliant stop.**
 22 Q. So this is a soft order or not really an order?
 23 **A. I wouldn't say it was an order at all. I would**
 24 **say it was an understanding, discussion of a probable**
 25 **tactic that -- position we would take should he pull**

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1 **over or stop.**
 2 Q. Well, since that particular probable tactic was
 3 addressed specifically on radio for all officers to
 4 hear, what other probable alternatives were ever
 5 addressed verbally through radio up until you
 6 discharged your firearm?
 7 **A. The stop sticks, the attempt to do a rolling**
 8 **roadblock that was cancelled.**
 9 Q. At the time of the felony call out is it your
 10 recollection that those discussions of the stop sticks
 11 and the second roadblock came after the discussion of
 12 the felony call out?
 13 **A. Did the -- ask that again.**
 14 Q. You indicated -- I asked you if there was any
 15 subsequent discussions later, after the fact of the
 16 felony call out order inference, whatever you want to
 17 refer to it as.
 18 MR. RASKIN: Objection,
 19 mischaracterizes that. You know he didn't
 20 testify to that.
 21 MR. SIDOTI: Strike that.
 22 I'll rephrase it.
 23 MR. RASKIN: Thank you.
 24 BY MR. SIDOTI:
 25 Q. The discussion on the radio regarding a felony

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1 call out between you and your immediate supervisor who
 2 is in charge of the pursuit, was there any
 3 communication after that discussion regarding any
 4 potential alternative tactics but for a felony call
 5 out?
 6 **A. No.**
 7 Q. I just want to make sure there's no audio were
 8 missing. You never said, hey, I'm going to get out of
 9 the car?
 10 **A. Well, if you're asking, like I testified**
 11 **earlier, a felony call out does include getting out of**
 12 **the car. That's part of the training. That's the**
 13 **basic. No one sits in their car for a felony call out.**
 14 **Even if you determine at that moment in time you are**
 15 **going to do a felony call out and it applied to that**
 16 **situation, every officer would have been out of their**
 17 **car at that moment.**
 18 Q. Does a felony call out mean get out of the car
 19 and rush up to the vehicle that you're pursuing?
 20 **A. No.**
 21 Q. Okay. So it's not that you complied with the
 22 discussion of the felony call out. You do a felony
 23 call out -- walk me through one that's not this
 24 particular case. What would you do in a felony call
 25 out then?

1 **A. In an ideal situation the vehicle that you're**
 2 **trying to stop is wanted for a felony pulls over, is**
 3 **compliant and stops, whether it be by an accident, but**
 4 **they're still remaining in the vehicle. It could be**
 5 **because they chose to pull over and stop or because**
 6 **they hit a pole, or for whatever reason the vehicle**
 7 **came to a stop and the occupants did not bail.**

8 **The officers will take a position of safety to**
 9 **the rear of the vehicle or where they all were to not**
 10 **create a cross fire. Then begin -- one person on the**
 11 **scene would begin calling out and giving very specific**
 12 **point-by-point commands to the occupants to comply.**

13 **And so long as that compliance continued, you**
 14 **would eventually walk them out under very direct**
 15 **control over the loud speaker, bringing each person**
 16 **back separately from each other, one at a time to a**
 17 **standby officer who would take them into custody and**
 18 **remove them from the immediate scene. And then that**
 19 **would continue until the vehicle was empty.**

20 Q. Do you have the ability to communicate through
 21 your loud speaker through your radio, or do you have to
 22 be physically in the car?

23 **A. You have to be physically in the car. Well,**
 24 **that's not --**

25 THE NOTARY: Excuse me. I

1 need more paper.

2 **A. To clarify, the microphone that operates the**
 3 **loud speaker is in the vehicle and it has an expandable**
 4 **cable. Nobody sits in the vehicle and gives commands**
 5 **while seated in the vehicle. They're standing outside**
 6 **the vehicle operating the mic that's attached within**
 7 **the vehicle.**

8 Q. Did you ever attempt to utilize yours prior to
 9 exiting your vehicle?

10 **A. No.**

11 Q. You've indicated that the felony call out --
 12 strike that.

13 There was no condition precedent in regards to
 14 the felony call out. There wasn't something that had
 15 to occur prior to just calling them out of the vehicle
 16 and not approaching it, was there?

17 **A. Yes. The vehicle had to come to a compliant**
 18 **stop in a controlled environment. This never occurred.**

19 Q. But no one ever said that?

20 **A. What do you mean?**

21 Q. On the audio. That's never said on the radio,
 22 hey, we're going to do a felony call out, you're right,
 23 we're not taking the car; well, only if the car stops
 24 though. That's never said. There's nothing audio --
 25 no one ever verbalized via radio that we're only doing

1 a felony call out when the car stopped, do they?

2 **A. Part of the plan if the car comes to a stop was**
 3 **to do a felony call out. Are you asking if someone**
 4 **verbalized something different?**

5 Q. Yes.

6 **A. If the vehicle came to a stop?**

7 Q. Did anybody --

8 MR. RASKIN: Wait.

9 MR. SIDOTI: I'm going to
 10 correct it. Let's just strike this.

11 MR. RASKIN: Thank you.

12 MR. SIDOTI: Let me
 13 clarify.

14 BY MR. SIDOTI:

15 Q. We've already agreed that through the pursuit
 16 you're utilizing the radio to communicate with all the
 17 officers involved, correct?

18 **A. Yes.**

19 Q. There's never any audio amongst the officers,
 20 any one, that indicates that the vehicle has to be
 21 stopped prior to the felony call out, is there?

22 **A. That would not make sense.**

23 Q. Okay.

24 **A. No one does a felony call out on a vehicle**
 25 **that's still in motion or still actively trying to**

1 **escape.**

2 Q. At the time when you exited your vehicle what
 3 lane of travel was your car in after you struck the van
 4 being driven by Mr. Evans?

5 MR. RASKIN: Objection.

6 That mischaracterizes the evidence.

7 There's no testimony that he struck the
 8 car.

9 MR. SIDOTI: He testified
 10 himself, Todd.

11 BY MR. SIDOTI:

12 Q. Officer, did you strike the van with your
 13 vehicle?

14 MR. RASKIN: You can
 15 testify.

16 **A. My vehicle came in contact with his.**

17 Q. I'm not going interchange words. There was
 18 contact?

19 **A. Yes.**

20 MR. RASKIN: It's
 21 different.

22 Q. You indicated that you attempted to make contact
 23 with the vehicle on the driver's side door, but that
 24 your car inadvertently made contact somewhere in the
 25 middle of the van, correct?

1 **A. That's not necessarily what I said.**
 2 Q. What did you say?
 3 **A. I intended on blocking the door so it couldn't**
 4 **open. And by trying to do that I rolled forward and**
 5 **made contact.**
 6 Q. So when we say contact and strike, like your
 7 intent was to use your vehicle to physically make
 8 contact with the van?
 9 **A. No.**
 10 Q. Okay.
 11 **A. My intent was to block his ability to open it**
 12 **far enough that he could escape.**
 13 Q. Got you. What lane of travel at that time do
 14 you believe your vehicle was in?
 15 **A. I don't recall.**
 16 Q. Mr. Scott asked you some questions regarding
 17 some recorded phone calls unbeknownst to the callers
 18 that you listened to at some point either prior to or
 19 after you made your statement to BCI. Do you recall
 20 that?
 21 **A. Yes.**
 22 Q. And you've been at this department for how many
 23 years again?
 24 **A. I'm in my eighteenth year.**
 25 Q. So are there phones within the vicinity that

1 have you ever in your tenure here ever been tendered
 2 recorded phone calls from within the department?
 3 **A. No.**
 4 Q. So this is the first time?
 5 **A. Yes.**
 6 Q. This the first time that you knew that phones
 7 were recorded here?
 8 **A. I knew that there were phones recorded at the**
 9 **police department, but I don't know which phones are**
 10 **and which are not.**
 11 Q. So if someone came in, you know, maybe someone
 12 is a passenger for an OVI and the driver gets arrested
 13 for operating a vehicle under the influence and the
 14 passenger has to come in. I'm sure that's happened
 15 before. Is that a fair statement?
 16 **A. Yeah.**
 17 Q. And they may want to call to get a ride.
 18 **A. Yes.**
 19 Q. Fair statement?
 20 Okay. What phone would you let them use?
 21 **A. I don't know. I've never had that come up where**
 22 **I had to have somebody use a phone within these walls.**
 23 **We don't have pay phones. I would imagine if we**
 24 **borrowed a cell phone, we would do that. But I've**
 25 **never had someone within these walls to have the**

1 aren't taped, if you know?
 2 MR. RASKIN: You mean the
 3 facility?
 4 MR. SIDOTI: Yeah. In the
 5 police station, yes.
 6 BY MR. SIDOTI:
 7 Q. Are there phones within the police station that
 8 are not taped?
 9 **A. I don't know what phones are or aren't taped. I**
 10 **don't know what the policy is regarding what phones**
 11 **shall be taped and which not. I don't know.**
 12 Q. Have you had instances in the past in which
 13 individual phone calls that are not in the jail -- so
 14 for the sake of this line of questioning I want to
 15 exclude everyone that's in jail or under a formal
 16 arrest in the jail. Okay?
 17 Have you ever had the opportunity to utilize
 18 individual's phone calls being taped that are making
 19 calls from within the department?
 20 **A. That would -- no. But only if you're also**
 21 **including dispatch which was not part of jail.**
 22 **Sometimes calls come into the dispatch and we use those**
 23 **recordings. But in terms of within the walls that we**
 24 **sit, no.**
 25 Q. So excluding dispatch and excluding the jail,

1 **opportunity to use a phone.**
 2 Q. Did you ever ask Officer Glover how he got those
 3 tapes when he e-mailed them to you?
 4 **A. No.**
 5 Q. Did you ever have a discussion with him
 6 regarding them?
 7 **A. Yes.**
 8 Q. What was that discussion?
 9 **A. I don't remember the specific details, but I**
 10 **remember the approximate time. I was still in relative**
 11 **shock of what happened and how this whole thing went**
 12 **down. And I was directed specifically by Deputy Chief**
 13 **Janowski that if I wanted to watch video or see any of**
 14 **the evidence or read statements or be involved in any**
 15 **way that I had to have someone close with me that knows**
 16 **me present.**
 17 **And we set out to watch the videos as they were**
 18 **put on CD for us to watch in the bureau. Sometime**
 19 **around there it occurred to me that, and I think it was**
 20 **just after reading -- we checked the CAD entry, C-A-D,**
 21 **to see if anyone had typed any narratives yet. And the**
 22 **only entry in there was Steving's entry.**
 23 **And it occurred to me at that moment that he had**
 24 **let her use phones within the walls. And I said, call**
 25 **dispatch and see if those calls were made on a recorded**

1 line. I didn't know what phones were used. I didn't
2 even know that she was brought back to the police
3 department until that moment and was allowed to use the
4 phone.

5 Q. Did you know immediately when inquiring that the
6 phone calls made by Ms. Pauley and some other
7 individuals were in fact made on recorded lines?

8 **A. No, I did not know.**

9 Q. Do you know how it came to be that Officer
10 Glover was the one responsible to listen to those and
11 provide you with summaries?

12 **A. He has an association with one of the**
13 **dispatchers who handles that when calls come in. He**
14 **has prior experience of getting 9-1-1 calls or misuse**
15 **of 9-1-1, or getting phone calls as they come in. I**
16 **hadn't experienced that yet or had an opportunity or a**
17 **need to recover incoming phone calls.**

18 **So I simply asked him, hey, ask the dispatcher**
19 **if she can get those phone calls.**

20 Q. Do you recall who that dispatcher was?

21 **A. No, I don't.**

22 Q. Do you know how many dispatchers are here?

23 **A. Many.**

24 Q. And if you know or don't know, does one
25 particular dispatcher or maybe one or two of them work

1 the night shift with you?

2 **A. Multiple dispatchers work at night the same time**
3 **I'm working, but it's a multi-jurisdiction dispatch**
4 **agency. So we may only have one assigned to our radio**
5 **traffic while there are five, six, seven dispatchers**
6 **assigned to other agencies within the same room at our**
7 **police department.**

8 Q. So I would be wrong in thinking that a
9 dispatcher would be this young lady that maybe sits on
10 the other side of this wall.

11 **A. That's correct.**

12 Q. It could be somebody else?

13 **A. Dispatch isn't even in this building. They're**
14 **in a separate building. They have an address down the**
15 **road.**

16 MR. RASKIN: That would be
17 the Chief's secretary.

18 BY MR. SIDOTI:

19 Q. Do you know if prior to Mr. Evans' removal from
20 the van if he was wearing a seat belt?

21 **A. He was not.**

22 Q. If when you immediately opened the door you see
23 both of his hands and he's not wearing a seat belt, why
24 not just grab him and take him out of the van at that
25 point?

1 **A. That sure was the plan.**

2 MR. RASKIN: Answer his
3 question.

4 **A. Why not --**

5 MR. SIDOTI: He did. It's
6 fine. I'll move on.

7 MR. RASKIN: I think we're
8 going to take a break now. How much
9 longer do you have?

10 MR. SIDOTI: Including the
11 video, less than 45 minutes.

12 (Thereupon, there was a recess.)

13 BY MR. SIDOTI:

14 Q. Officer, Mr. Scott asked do you recall if you
15 listened to the audio tapes of Ms. Pauley and Devon
16 prior to your interview with BCI, if you remember.

17 MR. RASKIN: That was asked
18 and answered.

19 You can answer it again.

20 **A. I still can't remember if it was prior to. I**
21 **don't remember how long it took to get them.**

22 Q. Okay. So at some point you did listen to them
23 though, correct?

24 **A. Yes.**

25 Q. Okay. And as you testified you indicated that

1 you were aware of their existence the same day as the
2 incident, correct?

3 **A. No, I did not say that.**

4 Q. Clarify for me. When you indicated that you
5 were kind of assigned to be with another officer and
6 you gave some testimony that if you want to view the
7 tapes and you want to do things, who was giving you
8 that instruction, was that Janowski?

9 **A. Yes.**

10 Q. Okay. And when was that conversation had, if
11 you recall?

12 **A. It was either the following day -- I remember**
13 **daylight, we were in the bureau. It could have been**
14 **the same day but much later in the day after daylight.**
15 **So it was within I'd say 24, 48 hours of the event.**

16 Q. Okay. So within very close proximity of time
17 you had a conversation with -- and I want to have his
18 rank, he's the deputy chief?

19 **A. Yes.**

20 Q. Janowski, that indicated if you wanted to watch
21 anything or listen to anything, was that prior to your
22 statement to BCI?

23 **A. Yes.**

24 Q. Okay. And when was that statement; when did you
25 give that statement?

1 **A. To BCI?**

2 Q. Yes.

3 **A. On March 14th.**

4 Q. Okay. So you have a conversation within 24 to
5 48 hours with Deputy Chief Janowski. Was he telling
6 you to come to me if you want to see the footage or
7 listen to the audio, or was he just telling you let me
8 know if you want to review it, if you recall?

9 **A. I don't remember specifically having to go
10 through him to gain access to any of the material. The
11 material is already generally available to us as patrol
12 officers, because it uploads to a database that we have
13 access to.**

14 **The instruction, as I remember it, was
15 specifically, just take it easy, don't watch anything,
16 don't listen to anything, don't talk to anybody, don't
17 listen to guys BSing on station. Just if you want to
18 sit down and watch it, do it in the bureau with another
19 guy like Glover. I think Glover might have even been
20 there at the time and volunteered to be there with me
21 and for me when we initially watch anything or hear
22 anything.**

23 Q. I understand the video's of dash cams of several
24 officers and, in fact, several jurisdictions. But what
25 relevance would it have to conversations made by

1 information. So if you think I'm going there, don't
2 answer that portion of the question or don't respond in
3 such a manner.

4 But after the McKissic -- well, strike that.

5 Mr. Scott asked there have been four use of
6 deadly force matters that you've been involved in.
7 With the McKissic matter, was that the second one that
8 you discharged your firearm in, if you recall?

9 **A. Ask the question again.**

10 Q. Was the McKissic incident the second of the four
11 -- second of the three uses of deadly force in which
12 you personally discharged your firearm?

13 **A. Yes.**

14 Q. Okay. That was the second?

15 **A. Yes.**

16 Q. And then Mr. Evans being the third?

17 **A. Right.**

18 Q. And the first of the four you did not discharge;
19 you were just involved perhaps collaterally?

20 **A. I did not fire, but I was directly in line of
21 everything that was going on at the moment.**

22 Q. Okay. So after the McKissic matter you
23 indicated some issues with perhaps protocol and
24 strategizing and things. Did you voice any of those
25 concerns to any supervisors in the department?

1 Ms. Pauley or Devon out of the station; what --

2 **A. It had nothing to do with my statement.**

3 Q. When I asked you about the McKissic case I had
4 asked you if you sustained any physical injuries as a
5 result of your involvement. I believe your response
6 was something along the lines of not physical. Were
7 there other injuries that you sustained?

8 **A. Well, if you look at our policy and the way it
9 describes injuries, injuries aren't just physical.
10 They're psychological. And for a long time I was very
11 set aside on how things like this occur and how we go
12 from having direct control of a situation, and then it
13 suddenly -- that control being taken away from us and
14 having to go through the situation that we did, the
15 depositions and the lawsuits and all that because of a
16 situation that was well planned out. We had everything
17 lined up and because it was suddenly changed, we had to
18 go through something.**

19 **So I had a lot the doubt in what we were doing
20 and what -- how important our planning and all that
21 structure was. And I had questions on whether or not I
22 wanted to be involved with that anymore.**

23 Q. So as a result of McKissic incident, as
24 Mr. Raskin has indicated, I'm not -- if you spoke with
25 any mental healthcare provider, I don't want that

1 **A. All those concerns came out by way of deposition
2 and the case itself.**

3 Q. That you --

4 **A. As far as a formal sit down that I disagree with
5 things had nothing to do with my police department as
6 it were. And I left the task force shortly after that,
7 so it really was a moot point.**

8 Q. Got it. So you had some personal issues on the
9 way that that particular incident was ran, and then you
10 left that task force?

11 **A. Not necessarily that it was ran, but the way it
12 resulted, yes.**

13 Q. Okay. Did ever seek any counseling after that?

14 MR. RASKIN: You can answer
15 that question with a yes or a no.

16 **A. Yes.**

17 Q. Having issues with the way that that resulted,
18 which again resulted in you discharging nine rounds of
19 your firearm striking Mr. McKissic, do you recall how
20 long it was after that that you left that task force?

21 **A. No.**

22 Q. Did you have to ask permission to leave that
23 task force?

24 **A. No.**

25 Q. Does it just go up through your supervisors at

1 Strongsville to say I don't want to do that any longer?

2 **A. I didn't experience that opportunity. The**

3 **opportunity to leave the task force arose because**

4 **Strongsville through attrition was having manpower**

5 **issues and it became an opportunity to come back to the**

6 **road for that reason, rather than voicing a concern or**

7 **having any other identifying problems.**

8 Q. Is it fair to say that incident in and of itself

9 had some impact on you as an officer?

10 **A. Yes.**

11 Q. I mean, people go through traumatic incidences

12 that can have a reverberating effect for the rest of

13 their lives; fair statement?

14 **A. I think it depends on the specifics, but yes.**

15 Q. Okay. If you had such an issue in the case in

16 which you had to discharge and shoot a man nine times

17 who you came to find out was unarmed, I mean, do you

18 think that compromised your judgment ability as you

19 continued on as a Strongsville Police Officer?

20 **A. No.**

21 **I think it improved it.**

22 Q. Well, let's just finalize between Mr. Evans and

23 Mr. McKissic. I know we have two incidents, some five

24 to six years apart. The dates are the dates, but fair

25 enough, somewhere outside of five to --

1 **A. Yes.**

2 Q. Both individuals are operating vehicles,

3 correct?

4 **A. Yes.**

5 Q. Both individuals are unarmed with any weapons,

6 correct?

7 **A. Yes.**

8 Q. Both individuals, you have a visual on both of

9 them while they're operating the vehicles, correct?

10 **A. Yes.**

11 Q. Both of the individuals for a total of 11

12 bullets, you're the only officer that discharges your

13 firearm on both of those incidences, correct?

14 **A. Yes.**

15 Q. And in both of those cases you voluntarily place

16 yourself in close proximity to those vehicles.

17 MR. RASKIN: Is that a

18 question?

19 MR. SIDOTI: Yes, it is.

20 MR. RASKIN: Then why don't

21 you ask it as a question?

22 BY MR. SIDOTI:

23 Q. And in both of those cases you also placed

24 yourself voluntarily in close proximity to both the

25 vehicles of Mr. McKissic and Mr. Evans, correct?

1 **A. No.**

2 MR. SIDOTI: Okay. For the

3 remainder of my questions, Todd, it's

4 probably easier if I flip my computer on

5 to that side and you tell me where you'd

6 like me to sit. It's probably easier if

7 I'm in the middle where you can sit next

8 to him, or you can stand. What do you

9 prefer for the watching of the video?

10 MR. RASKIN: Well, --

11 MR. SIDOTI: You guys can

12 both come stand over my shoulder.

13 MR. RASKIN: What's your

14 preference?

15 THE WITNESS: Whatever's

16 easiest. Let's just get it done.

17 MR. RASKIN: Why don't we

18 stand?

19 (Thereupon, there was a discussion

20 off the record.)

21 MR. SIDOTI: Let the record

22 reflect Mr. Raskin's jovial comment was

23 taken just as such.

24 MR. RASKIN: Thank you. I

25 appreciate that.

1 BY MR. SIDOTI:

2 Q. So I'm going to do this the easiest way possible

3 for continuity with the deposition testimony. I'm

4 going refer to this as I have in other depositions as

5 the request for production of documents tendered by the

6 Plaintiffs responded to by the Defendants.

7 This is all the documents on a thumb drive.

8 This is RFP Number 6 which is designated as the video

9 dash cam that's been tendered. That particular exhibit

10 of RFP Number 6 has five separate videos starting with

11 car 3 to car 9, cars 12 and 27 and the SPD of the final

12 two files aren't important.

13 So I'm going to click on car 9, which is the

14 second of the videos. And there's nine pieces of video

15 clip. I'm clicking on the first one. This is a video

16 that is approximately 15 minutes in length.

17 I'm going to go to the beginning of this,

18 Officer Miller, and we'll just talk about a couple

19 things for the purposes of identification.

20 Here we have what I've stopped at 1 minute 53

21 seconds of the outline portion of the video. It

22 indicates 3-7 of 2017. The time looks to be 2:37 in

23 the morning and 57 seconds with a front I'm assuming is

24 going to be the camera indicating of Number 9. Do you

25 see that, sir?

1 **A. Yes.**
 2 Q. Do you recall, are you familiar with this video;
 3 have you viewed this in the past?
 4 **A. Yes.**
 5 Q. Okay. And what do you understand this video to
 6 be?
 7 Do you know whose vehicle this is?
 8 **A. Yes.**
 9 Q. Okay. Whose vehicle is this?
 10 **A. Plut's.**
 11 Q. Okay. This is Officer Plut that was involved in
 12 the incident that we're discussing. I can play a
 13 portion of it, I don't have the audio on, starting from
 14 the beginning. This of course is a different officer's
 15 vehicle, correct?
 16 The same --
 17 **A. Still Officer Plut.**
 18 Q. Okay. So let's --
 19 MR. SIDOTI: Off the record
 20 for a second.
 21 (Thereupon, there was a discussion
 22 off the record.)
 23 BY MR. SIDOTI:
 24 Q. All right. So, Officer Miller, we've scrolled
 25 through several minutes of the video. If you'll

1 indicate on the bottom here, I have it at 12 minutes.
 2 Do you see that?
 3 **A. Yes.**
 4 Q. Okay. Do you see what this video is depicting
 5 at this still frame at 12 minutes?
 6 **A. Yes.**
 7 Q. What do you see there?
 8 **A. I see Mr. Evans' van up and to the right**
 9 **slightly and Sergeant Kelley's SUV up and to the left**
 10 **and they're nearly parallel.**
 11 Q. Okay. And what lane of travel are they in
 12 respectively at this time?
 13 **A. I don't know yet.**
 14 Q. I forwarded it and I'm stopping the video at
 15 12:30. Do you see another vehicle in the picture now?
 16 **A. Yes.**
 17 Q. Okay. And whose vehicle is that on the right?
 18 **A. Mine.**
 19 Q. Okay. And can you tell me now where the
 20 vehicles in their respective lanes, where they're
 21 operating?
 22 **A. Yes.**
 23 Q. Please tell me starting with Sergeant Kelley.
 24 **A. Sergeant Kelley is in the Number 2, the center**
 25 **lane. Mr. Evans is in the Number 3 lane and I am on**

1 **the berm.**
 2 Q. Okay. I'm playing the video starting at 3:28
 3 here. All right. At 3:31 we've seen now the van is
 4 spinning out of control.
 5 **A. 3:31?**
 6 Q. Yes.
 7 **A. Yes.**
 8 Q. 13:31, I apologize. You saw the van go out of
 9 view and I'm now stopping it here at 13:35. Do you see
 10 that?
 11 **A. Yes.**
 12 Q. Sergeant Kelley to the left. The van as we view
 13 the still image looking to be pointing somewhere around
 14 8:30; fair statement?
 15 **A. The van pointing --**
 16 Q. (Indicating).
 17 **A. I don't know about 8:30. Are you trying to say**
 18 **the van has something to do with a clock?**
 19 **So let's say 270 degrees.**
 20 Q. Okay. And your vehicle is here on the right?
 21 **A. Yeah.**
 22 Q. So let's play it again from 13:27. Okay. I
 23 just stopped it there at 13:36. Do you see that?
 24 **A. Yes.**
 25 Q. Your vehicle just struck the door on the front

1 driver's side of the vehicle being driven by Mr. Evans,
 2 correct?
 3 **A. Yes.**
 4 Q. Okay. So when we indicated in some questions
 5 earlier when I asked about the contact, Mr. Evans' car
 6 just spun out, you stated about 270 degrees. And now
 7 your vehicle just struck the driver's side near the
 8 door, near the rear of the door on the driver's side,
 9 correct?
 10 **A. I believe both vehicles struck each other.**
 11 **Mr. Evans' vehicles was still rotating on its axis at**
 12 **that moment that I'm also moving forward. I don't**
 13 **think it was in part that vehicle stopped rotating**
 14 **because of my vehicle.**
 15 Q. Okay. So now again I've stopped at 13:37 we
 16 saw. Now Sergeant Kelley's vehicle and Mr. Evans'
 17 vehicle have just made contact with one another also,
 18 correct?
 19 **A. Yes.**
 20 Q. Okay. Now, your vehicle you see that at 13:37
 21 it depicts that the driver's side door is opening. Do
 22 you see that?
 23 **A. Yes.**
 24 Q. Your vehicle is in park at this time?
 25 **A. I don't know the answer to that.**

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1 Q. Well, would you have left your car in drive when
 2 you exit the vehicle?
 3 **A. At that moment I can't say whether it was in**
 4 **park or still in drive.**
 5 Q. Okay. Now I've stopped it at 13:40 which
 6 depicts now that you exited the vehicle, correct?
 7 **A. Yes.**
 8 Q. Is it fair to assume that your car's now in
 9 park?
 10 **A. In fact I remember now, that's why I got back in**
 11 **the car to put it in park.**
 12 Q. So what would you approximate, Officer, is the
 13 distance from the rear of Mr. Evans' van at this
 14 juncture to the guard rail on the berm?
 15 **A. I have no idea.**
 16 Q. Could you just estimate?
 17 **A. No.**
 18 Q. Well, we know that your car is now in park and
 19 you testified that you were driving in the berm when
 20 Mr. Evans was operating the vehicle in the three lane,
 21 correct?
 22 **A. That car spun out and started left and continued**
 23 **left. And, actually, the beginning of the spin out**
 24 **began at or on the berm on the far left. So it's where**
 25 **he came to a rest. Right now the majority of the left**

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1 **of my car, the driver's side indicating that I made a**
 2 **left turn towards the interior of the roadway. So I'm**
 3 **not close to the berm, nor am I on the berm or the**
 4 **guard rail.**
 5 Q. So you're not able to say how far away the rear
 6 of his van is to the guardrail at that time?
 7 **A. No.**
 8 Q. Okay. Starting at 13:39. 13:39 you're out --
 9 13:41 you're out of your vehicle here, correct?
 10 **A. Well, let's use the time on the screen.**
 11 Q. 2:40:09, we'll use that now. You're indicating
 12 the time stamp designation next to the date of what is
 13 indicating --
 14 MR. RASKIN: Can I stop you
 15 for a minute?
 16 MR. SIDOTI: Sure
 17 MR. RASKIN: You're asking
 18 a whole series of questions about a video
 19 that you're playing on your laptop,
 20 including specific references to time,
 21 either the time stamp or the amount of
 22 time that the video encompasses and
 23 specific points on it.
 24 I'm going to ask then that that video
 25 be marked as an exhibit to this

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1 deposition, because otherwise both your
 2 questions and Officer Miller's answers
 3 don't make any sense.
 4 MR. SIDOTI: Understood.
 5 Which is why --
 6 MR. RASKIN: So if you
 7 could just pull out the thumb drive. If
 8 you've got more on the thumb drive than
 9 just that, you can send it to the
 10 reporter. I'm perfectly okay with that.
 11 Let's just mark it as an exhibit so that
 12 we'll have questions and answers and an
 13 exhibit to refer to.
 14 MR. SIDOTI: Just for the
 15 record, we've used this specific video
 16 footage in prior depositions. I do have a
 17 separate thumb drive specifically of how
 18 it was tendered by the Defendants in
 19 regards to the response to the production
 20 of documents. So I do have this
 21 particular piece of footage with the same
 22 time stamps, both in regards to Windows
 23 Media Player and to the designation of
 24 time on top of the exhibit.
 25 So that is separate. It's been

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1 referenced in other depositions. If you
 2 want to also include it in this, then I'll
 3 do that.
 4 MR. RASKIN: I just want it
 5 marked.
 6 MR. SCOTT: I think you
 7 described it as --
 8 MR. SIDOTI: It's been
 9 marked, but I'll mark it for this depo.
 10 MR. SCOTT: I thought
 11 being described it as being produced in
 12 response to production of documents Number
 13 6 and the specific camera angle.
 14 MR. SIDOTI: Right.
 15 MR. SCOTT: Okay.
 16 BY MR. SIDOTI:
 17 Q. So, now, Officer Miller, I'll use the reference
 18 to the time stamp up top. We're dealing with 2:39:40,
 19 right?
 20 Now we're at 2:40:03, counting, :04. Why don't
 21 you note you get out of the vehicle here. Not really
 22 an important time, but, you know, I stopped it at
 23 2:40:09. Do you see that?
 24 **A. Yes.**
 25 Q. Do you see yourself out of the vehicle?

1 **A. Yes.**
2 Q. Your right hand, would you agree with me that
3 it's on your firearm?
4 **A. I don't know the answer to that.**
5 Q. I started here at 2:40:02. Watch this clip of
6 the video, please.
7 Okay. So now there's a period of time in which
8 your hand is on your firearm, correct?
9 **A. Yes.**
10 Q. Do you recall what you were doing at that time?
11 **A. I was holding it.**
12 Q. Okay. Had you taken the first level of safety
13 off your holster at that time?
14 **A. No.**
15 Q. Okay. But it's fair to say that when you get
16 out of the vehicle and for the portion now as you're
17 approaching the door of Mr. Evans that you've just been
18 addressing your firearm, correct?
19 **A. Yes.**
20 Q. Okay. All right. Now I stopped it at 2:40 and
21 12 seconds. You'll indicate the door has been opened,
22 correct?
23 **A. Yes.**
24 Q. Okay. And now 2:40 and 13 seconds. Do you see
25 that?

1 **A. See what?**
2 Q. Do you see that the door is now opened and your
3 gun -- or your arm is extended with the firearm in your
4 right hand, correct?
5 **A. I can't see that, but I can only assume that.**
6 Q. I'm going to play it through starting at 2:40
7 which is where -- so I'm going to let this play.
8 I stopped at 2:40:14. Do you see that?
9 **A. Yes.**
10 Q. Would it assist you hearing the audio to be able
11 to testify that you have already fired the two shots;
12 will that assist you?
13 **A. I believe so, yes.**
14 Q. Okay. 2:40:15 we stopped the footage. Now with
15 audio you can hear both shots have already been
16 discharged, correct?
17 **A. Yes.**
18 Q. You're the only officer that has fired at that
19 time, correct?
20 **A. Yes.**
21 Q. Okay. As you just watched that portion of the
22 video, prior to you exiting the vehicle and up until
23 discharging your firearm were we just able to watch
24 that on I'll call this Exhibit Number --
25 MR. SIDOTI: Where did you

1 leave off, Joe? I'll mark it as after
2 that.
3 MR. SCOTT: I think I left
4 off at 14.
5 BY MR. SIDOTI:
6 Q. I'm going to mark this particular portion of
7 footage as Plaintiffs' Exhibit 15. You had the
8 opportunity to watch this clip of prior to exiting your
9 vehicle up until both shots have been discharged by
10 yourself, Officer Miller; is that correct?
11 **A. How does she know what part of the footage**
12 **you're on?**
13 Q. Well, I played the footage starting at --
14 **A. You're referencing a frozen screen.**
15 Q. Okay. So we're playing it from 2:40 prior to
16 exiting the vehicle and you watched it until both shots
17 have been discharged and that was at the end of 2:40
18 and 15 seconds; is that a fair statement?
19 **A. Yes.**
20 Q. Okay. This camera angle is perpendicular to
21 the driver's side window of the vehicle operated by
22 Mr. Evans, correct?
23 **A. Yes.**
24 Q. Okay. Were you able to see his hands in the
25 video image for the portion that we just watched on the

1 steering wheel operating the car?
2 **A. No.**
3 Q. Okay. Could you see his hands on the steering
4 wheel immediately before and during while you're
5 opening the door of the van?
6 **A. As by way of watching the video?**
7 Q. Yes.
8 **A. Not by watching the video, no.**
9 Q. Okay. Were you able to notice that Sergeant
10 Kelley, as Mr. Scott asked you previously, did since
11 drive his vehicle up to block the path of Mr. Evans?
12 **A. I don't know that I knew that at the moment.**
13 Q. So as you just watched this video and all the
14 times you've had the opportunity to watch the video and
15 in your recollection do you recall that Mr. Evans'
16 hands were on the wheel and/or on the gear shifter as
17 you were opening the door?
18 **A. Yes.**
19 MR. SIDOTI: You can have a
20 seat, Todd. You guys can have a seat.
21 MR. RASKIN: Oh, okay.
22 Just so I'm clear, Marcus, you're
23 going to mark that thumb drive?
24 MR. SIDOTI: No. I'll have
25 to mark another one, but I have this

1 specific piece of footage on its own
 2 independent thumb drive.
 3 MR. RASKIN: When you say
 4 this specific piece of footage are you
 5 talking about Plut, the view from his
 6 cruiser?
 7 MR. SIDOTI: The Defendants
 8 tendered their response to production.
 9 And in that it's been systematic, so
 10 Mr. Scott and I have the same documents
 11 and they're listed the same because they
 12 were -- I don't have the ability to
 13 change --
 14 MR. RASKIN: Right. But
 15 I'm saying are you going to tender the
 16 entire video from when you first asked the
 17 witness do you recognize the vehicle all
 18 the way through to your last question
 19 which was at 2:40:15, I believe, when the
 20 question was were both shots fired or
 21 words to that effect?
 22 I just want to make sure that we're
 23 clear. Are you going to tender all of
 24 that and mark it?
 25 MR. SIDOTI: From start to

1 finish. For the entire 15 minutes I will
 2 have an independent exhibit for that.
 3 MR. RASKIN: That's what I
 4 want to make sure.
 5 MR. SIDOTI: All right. So
 6 I'm going to, when I do tender that, which
 7 will be used in other depositions, but we're
 8 going to refer to it as Plaintiffs' 15.
 9 And, again, for clarification in the
 10 response by the defense through the
 11 discovery process it's been referred to as
 12 RFP Number 6, video 1 of car 9.
 13 Just a few more questions.
 14 MR. RASKIN: Hang on.
 15 THE WITNESS: We're good.
 16 BY MR. SIDOTI:
 17 Q. Officer Miller, are you aware as you sit here
 18 today that your counsel has already taken the
 19 deposition of Ms. Pauley in regards to this matter?
 20 A. Yes.
 21 Q. Okay. As you sit here today do you understand
 22 that her testimony was that at the time the shots were
 23 fired that Mr. Evans' hands were both above his heart,
 24 either on the steering wheel or on the gear shift at
 25 the time you discharged both shots?

1 MR. RASKIN: Objection.
 2 That mischaracterizes her testimony. Her
 3 testimony was not consistent.
 4 But you can answer what you
 5 understand.
 6 A. No, I don't know what she testified to.
 7 Q. Okay. So if you were to be informed that
 8 Ms. Pauley's testimony was at the time you fired both
 9 shots that Mr. Evans' hands were in fact above his
 10 heart and not reaching down near the middle counsel,
 11 that would be inconsistent with what you recall of the
 12 events that transpired for this incident.
 13 A. I don't know what she perceived in what
 14 chronological order. I can't say what she said.
 15 Q. Okay. But if Ms. Pauley were to say at the time
 16 of the shooting on both shots that Mr. Evans' hands
 17 were in fact above and not dropping down, that would be
 18 inconsistent with what you recall occurred on that day?
 19 A. It would be inconsistent.
 20 Q. Also in regards to any verbal commands that you
 21 gave, if Ms. Pauley's testimony was that you gave no
 22 verbal commands prior to discharging your firearm, that
 23 would be inconsistent with what you recall transpired
 24 on that day as well, correct?
 25 A. The video from my cruiser will show that's

1 inconsistent. Yes.
 2 Q. You believe the video indicates that there were
 3 verbal commands given prior to your first shot?
 4 A. Absolutely.
 5 MR. SIDOTI: Officer, I
 6 don't believe I have any further questions
 7 at this time. Thank you.
 8 MR. SCOTT: If I could
 9 just ask a couple quick questions in
 10 follow up.
 11 ---
 12 BY MR. SCOTT:
 13 Q. Officer Miller, you'd agree with me that your
 14 intent was to position your vehicle so as to block the
 15 driver's door after the van spun out, correct?
 16 A. Yes.
 17 Q. And that was to prevent the driver of that
 18 vehicle from bailing from the vehicle, correct?
 19 A. Yes.
 20 Q. And that would have been consistent with the
 21 tactics involved in performing a felony call out,
 22 correct?
 23 A. No.
 24 Q. Is part of a felony call out watching or
 25 preventing the driver of the vehicle from bailing from

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1 the vehicle?
 2 **A. No.**
 3 Q. Okay. Was that part of the discussion when you
 4 were discussing a felony call out during the pursuit
 5 words to the effect, if no one bails, we're going to do
 6 a felony call out?
 7 **A. Are you asking if we had a discussion if no one**
 8 **bails we're going to do a felony call out?**
 9 Q. Let me ask you this: the radio communications,
 10 you've listened to them, reflect communications between
 11 yourself and other officers to the effect that if no
 12 one bails, we're going to do a felony call out,
 13 correct?
 14 **A. Yes.**
 15 Q. Positioning your vehicle against the driver's
 16 side door as you had intended would have been a means
 17 of preventing the driver from bailing from the vehicle,
 18 correct?
 19 **A. Yes.**
 20 Q. Okay. Mr. Sidoti was asking questions regarding
 21 the similarities between the events of the March 7,
 22 2017 pursuit with the events involved in the Lawrence
 23 McKissic incident, and had asked you if in both
 24 instances you had voluntarily positioned yourself in a
 25 position of danger, do you recall that, and you said,

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1 no, that's not correct, correct?
 2 **A. Do I recall saying that? Yes, that's correct.**
 3 Q. Okay. You would agree that in both instances
 4 the tactics that you determined to employ in responding
 5 to those situations resulted in you being placed in
 6 close proximity to the cars in both instances?
 7 **A. Not necessarily, no.**
 8 Q. Well, you in fact were in close proximity to
 9 both cars in both instances, correct?
 10 **A. Where I was in close proximity and the how I got**
 11 **there were not necessarily my decision.**
 12 Q. Nobody ordered you in to close proximity of the
 13 cars in either instances, did they?
 14 **A. In the first one, yes.**
 15 Q. Who ordered you in close proximity to
 16 Mr. McKissic's vehicle?
 17 **A. It was by way of the lieutenant saying we're**
 18 **going to take them down now and that's where my car**
 19 **was. At the moment of that takedown, that's where I**
 20 **was. I had no choice. There was no time for**
 21 **discussion.**
 22 Q. Did anyone order you in close proximity to
 23 Mr. Evans' van on the March 7th, 2017 incident?
 24 **A. No.**
 25 MR. SCOTT: Thank you,

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1 Officer. That's all I have.
 2 MR. SIDOTI: Two follow
 3 ups.
 4 ---
 5 BY MR. SIDOTI:
 6 Q. Officer, was there any other way that you were
 7 communicating with the officers involved other than the
 8 audio radio communications that we've received or you
 9 reviewed?
 10 **A. No.**
 11 Q. Were you texting?
 12 **A. No.**
 13 Q. You're not FaceTiming?
 14 Anything on the radio is the only way that you
 15 were communicating amongst yourselves regarding this
 16 incident?
 17 **A. Yes.**
 18 Q. Just Mr. Scott's last question with regards
 19 McKissic, how you indicated I'm in close proximity on
 20 the McKissic matter by the order that we're going to do
 21 this now. But I'm assuming had the superior officer
 22 ordered you, Officer Miller, you get out and stand
 23 directly in front of the car, that order was never
 24 made, correct?
 25 **A. No.**

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1 Q. That was a voluntary position that you chose to
 2 take when you were getting out of the vehicle and
 3 placing yourself in front of Mr. McKissic's car,
 4 correct?
 5 **A. It was not voluntary, no.**
 6 Q. Let me ask you this: when you're trained, OPOTA
 7 and the like, for executing traffic stops, there's
 8 posts on vehicles, for instance the A post, correct?
 9 **A. Yes.**
 10 Q. You're familiar with that?
 11 **A. Yes.**
 12 Q. It's an A post which is near the back side of
 13 the driver's door for safety so that officers won't get
 14 shot or would have longer time to react in case
 15 someone's going to produce a weapon, correct?
 16 **A. Are you asking me if that's how it was designed?**
 17 Q. Yeah. Is that what your understanding is of
 18 when officers are trained to take an A post during a
 19 traffic stop?
 20 **A. This wasn't a traffic stop.**
 21 Q. I'm not asking you that. I'm asking you
 22 specifically in regards to a traffic stop, are you
 23 familiar with the training to take an A post during the
 24 execution of a traffic stop?
 25 **A. No.**

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- 1 Q. What is an A post?
- 2 **A. The rear of the vehicle where the window meets**
- 3 **the frame or the rear trunk area.**
- 4 Q. Do you understand that to be consistent with
- 5 your training if you are effectuating just a traffic
- 6 stop?
- 7 **A. No.**
- 8 Q. Okay. But you understand and would agree that
- 9 there's training in regards to positions you would take
- 10 with a vehicle when you're on foot for officer safety,
- 11 correct?
- 12 **A. I think what you're asking me is --**
- 13 MR. RASKIN: Hold on. No,
- 14 no. You're not to inquire what you think
- 15 he's asking. If you understand his
- 16 question, answer it. If you don't, ask
- 17 him to rephrase it. It's not a
- 18 conversation.
- 19 **A. I don't understand what you're saying.**
- 20 Q. Do you understand that there is training for
- 21 officers specifically regarding traffic stops on
- 22 positions taken near the vehicle for officer safety?
- 23 **A. Regarding the A post?**
- 24 Q. Is there training for officers during the
- 25 effectuation of traffic stop?

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- 1 **A. Yes.**
- 2 Q. You're trained to do it so that you're safe.
- 3 **A. Yes.**
- 4 Q. And it's for circumstances so you have time to
- 5 react and to make sure someone's not going to produce a
- 6 gun and things like that, correct?
- 7 **A. Yes.**
- 8 Q. So there's training that you're provided that
- 9 you specifically had on a proper way to approach a
- 10 vehicle when you're on foot so that you're safe,
- 11 correct?
- 12 **A. Yes.**
- 13 Q. And one of those is not standing in front of a
- 14 vehicle, correct?
- 15 **A. This wasn't --**
- 16 Q. I'm not asking you, sir. I mean, can we agree
- 17 that standing in front of a vehicle is not a safe place
- 18 for an officer based on training to stand to keep
- 19 himself safe?
- 20 **A. It's not an ideal location.**
- 21 Q. Then if you put yourself in that place
- 22 voluntarily -- strike that.
- 23 Officer, though, would you agree it's consistent
- 24 in both of these cases, both McKissic and Evans, you
- 25 without order on your own, and in fact not with the

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- 1 felony call out that was in the Evans case, put
- 2 yourself voluntarily in a position of placing yourself
- 3 in danger to then justify the use of deadly force?
- 4 MR. RASKIN: Objection.
- 5 You have asked that question several
- 6 different ways. And he has testified that
- 7 he did not voluntarily put himself in a
- 8 position of danger in the McKissic case.
- 9 So last time, Marcus, and then I'm
- 10 going to tell him don't answer anymore.
- 11 Go ahead. You can answer him again.
- 12 **A. Ask the question again, please.**
- 13 Q. In both McKissic and Evans case you weren't
- 14 specifically ordered to take the positions that you
- 15 took when you were outside of your vehicle. You took
- 16 those positions subject to the order of we're taking
- 17 the car down in McKissic now, but you placed yourself
- 18 into those positions that you justified that after you
- 19 placed yourself there justifying the use of deadly
- 20 force in both of those cases?
- 21 **A. I disagree.**
- 22 MR. SIDOTI: I have nothing
- 23 further.
- 24 MR. SCOTT: Nothing else.
- 25 Thank you.

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- 1 MR. RASKIN: No waiver.
- 2 (Thereupon, Plaintiffs' Exhibit 15 to
- 3 the deposition of OFFICER WILLIAM JASON
- 4 MILLER will be provided and marked for
- 5 identification.)
- 6 ---
- 7 (DEPOSITION CONCLUDED.)
- 8 ---
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1 I have read the foregoing transcript from Page 1
2 through 189 and note the following corrections:
3 PAGE LINE REQUESTED CHANGE

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OFFICER WILLIAM JASON MILLER

21 Subscribed and sworn to before me on the ____ day
22 of _____, 2018.

23
24

Notary Public

25 My commission expires: _____.

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1 CERTIFICATE

2 State of Ohio,) SS:
3 County of Cuyahoga.)

4 I, Kristine M. Esber, a Notary Public within and
5 for the State of Ohio, duly commissioned and qualified,
6 do hereby certify that the within-named witness,
7 OFFICER WILLIAM JASON MILLER, was by me first duly
8 sworn to tell the truth, the whole truth and nothing
9 but the truth in the cause aforesaid; that the
10 testimony then given by him was reduced to stenotypy,
11 and afterwards transcribed by me through the process of
12 computer-aided transcription, and that the foregoing is
13 a true and correct transcript of the testimony so given
14 by him as aforesaid.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified.

18 I am not, nor is the court reporting firm with
19 which I am affiliated, under a contract as defined in
20 Civil Rule 28(D).

21 I do further certify that I am not a relative,
22 employee or attorney of either party, or otherwise
23 interested in the event of this action.

24 IN WITNESS WHEREOF, I have hereunto set my hand
25 and affixed my seal of office at Cleveland, Ohio, on
this 29th day of August 2018.

Kristine M. Esber, Notary Public
in and for the State of Ohio.
My Commission expires November 29, 2020.

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CERTIFICATE

State of Ohio,) SS:

County of Cuyahoga.)

I, Kristine M. Esber, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness, OFFICER WILLIAM JASON MILLER, was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was reduced to stenotypy, and afterwards transcribed by me through the process of computer-aided transcription, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

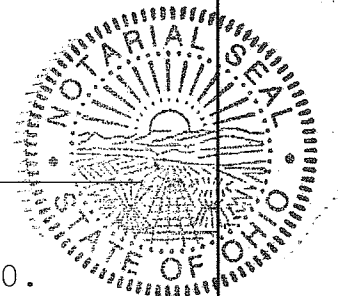
I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

I do further certify that I am not a relative, employee or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 29th day of August 2018.

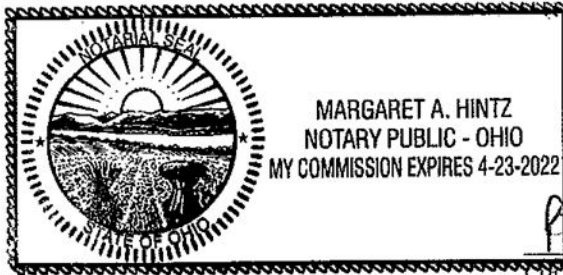
Kristine M Esber

Kristine M. Esber, Notary Public
in and for the State of Ohio.
My Commission expires November 29, 2020.



I have read the foregoing transcript from Page 1
through 189 and note the following corrections:

PAGE	LINE	REQUESTED CHANGE
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[Signature]
OFFICER WILLIAM JASON MILLER

Subscribed and sworn to before me on the 18th day
of SEPTEMBER, 2018.

[Signature]
Notary Public

My commission expires: 04-23-22.